

VOLUME V
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 304

**CONTINENTAL ORE COMPANY, ET AL.,
PETITIONERS,**

vs.

**UNION CARBIDE AND CARBON
CORPORATION, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**PETITION FOR CERTIORARI FILED AUGUST 11, 1961
CERTIORARI GRANTED OCTOBER 23, 1961**

No. 16149

United States
Court of Appeals
for the Ninth Circuit

CONTINENTAL ORE COMPANY, a Partnership, and HENRY J. LEIR, ERNA D. LEIR, LINA SCHLOSS, as Individuals and as partners under the trade name and style of CONTINENTAL ORE COMPANY,
Appellants,

vs.

UNION CARBIDE AND CARBON CORPORATION; UNITED STATES VANADIUM CORPORATION; ELECTRO METALLURGICAL COMPANY; ELECTRA METALLURGICAL SALES CORPORATION; ELECTRO METALLURGICAL COMPANY OF CANADA, LIMITED; VANADIUM CORPORATION OF AMERICA,
Appellees.

Transcript of Record

In Seven Volumes

VOLUME V.

(Pages 1665 to 2068, inclusive)

Appeal from the United States District Court
for the Northern District of California,
Southern Division

(Testimony of Stuart C. Du Tot.)

Q. At that time did you tell Mr. Burwell not to mention vanadium to Crucible Steel as a favor to you? A. I did not.

Q. At that time, or at any other time, did you state to Mr. Burwell that Crucible had been getting their vanadium from Vanadium Corporation of America, and that you had been instructed by Mr. Remmers and Mr. Priestley not to approach customers of the Vanadium Corporation of America? A. I made no such statement.

Q. Did you and Mr. Burwell subsequently go to the Crucible Steel Company? A. Yes, we did.

Q. What occurred there?

A. I took those fellows down to see Mr. Taylor, who was the director of purchases, and prior to going down there Mr. Burwell had stated that he was interested in buying some drill rods for his mining operations, and he would like to go down and talk to Crucible Company about this, with the idea, of course, of helping our situation on sales of ferro-vanadium and ferro-tungsten.

Mr. Taylor referred us to Mr. Billingsley, and in Mr. Billingsley's office it developed that Mr. Burwell was buying [1844] this drill rod for some jobbing outfit in Denver. And Mr. Billingsley said that was perfectly all right as they were supplying this jobber, so indirectly Crucible Steel Company was getting the drill rod business. And that about ended it as far as the drill rod went. Everybody was satisfied.

(Testimony of Stuart C. Du Tot.)

Q. Did you discuss vanadium at the Crucible Steel Company at that time?

A. We touched on it, yes.

Q. Were you instructed during the period of time that is involved here by either Mr. Remmers or Mr. Priestley, or any of them, not to solicit Crucible Steel Company, or any other customer of Vanadium Corporation of America?

A. I never had such instructions, no, sir.

Q. Did you ever attempt to sell vanadium to Crucible Steel Company? A. I certainly did.

Q. Did the other people in your office under you attempt to sell them?

A. They certainly did.

Q. Were you successful?

A. We were not successful.

Mr. Archer: I have no further questions of Mr. Du Tot.

Cross-Examination

Q. (By Mr. Alioto): Do you know whether the Crucible Company had a [1845] requirements contract with Vanadium Corporation of America?

A. I don't know, sir.

Q. Or any other contract with the Vanadium Corporation of America?

A. I don't know, sir.

Q. Who was the director of purchases for Crucible? A. Mr. A. W. Taylor, at that time.

Q. Was there a Billinger, or Pilsenger connected with that company?

(Testimony of Stuart C. Du Tot.)

A. Filsinger. Well, what year are you speaking of, now?

Q. Any year. Does that name ring a chord?

A. Mr. Filsinger.

Q. Filsinger?

A. Filsinger; F-i-l-s-i-n-g-e-r.

Q. He was the director of purchases for Crucible? A. That's right.

Q. Did he have a son working for one of the Vanadium companies? A. I believe he does.

Q. Working for which company?

A. Vanadium Corporation of America.

Q. Did they have a contract, requirements contract, with them? A. I don't know.

Q. Did you have a contract with the Vitro Company, one of your annual contracts, in 1940? [1846]

A. I think perhaps we did.

Q. Did the Vanadium Corporation have one, too?

A. I don't know.

Q. Was yours a split requirements contract?

A. It may be—it may have been. I don't recall. It may have been purely a requirement contract, if we had one.

Q. But you have no recollection on that?

A. I have no recollection of how it was.

Q. Mr. Du Tot, when did you start with the Union Carbide Company or any of its affiliates?

A. You mean start my employment?

Q. Yes. A. In 1917.

Q. That was the time the Union Carbide was formed, incidentally?

(Testimony of Stuart C. Du Tot.)

A. It was just about that time.

Q. In other words, it was formed during the First World War? A. That's right.

Q. And were you working with the company during the thirties? A. Yes, sir.

Q. Did you know, during the thirties, where the Vanadium Corporation of America was securing its supply of raw materials? [1847]

Mr. Archer: Well, I object.

Mr. Alioto: Well, from '38 on.

The Court: Objection sustained. You can ask after '38.

Q. (By Mr. Alioto): After January 1, 1938, do you know whether or not your company was selling vanadium oxide to the Vanadium Corporation of America?

A. I would have no knowledge of that, sir.

Q. None at all? A. No.

Q. Didn't you ever read a report prepared by anybody in the Union Carbide organization that referred to that fact? A. No, sir.

Q. Did you know a man named MacQuigg?

A. I knew Mr. MacQuigg.

Q. Was he in the research department of the Union Carbide Company?

A. He was at one time.

Q. Did you do any work with Mr. MacQuigg on the report that related to the relations between the Union Carbide and V.C.A.?

The Witness: Would you repeat that question, please?

(Testimony of Stuart C. Du Tot.)

Mr. Holland: Let's fix the date on this question. What date is he referring to? [1848]

Mr. Alioto: Do you want to read the question, please?

The Court: Read it.

(Question read by the reporter.)

A. No, sir.

Mr. Holland: Fix the date.

Q. (By Mr. Alioto): Did you, at any time after January 1, 1938, see such a report?

A. No, sir.

Q. When was this conversation with Mr. Burwell about which you testified?

Mr. Archer: He testified to two.

Mr. Alioto: Yes.

Q. (By Mr. Alioto): What were the dates of those conversations?

A. I don't know what the dates were. The years, probably 1940 up to 1946.

(Mr. Alioto examining documents.)

Mr. Archer: What you are looking for, Mr. Alioto, is the letter at the end, dated about 1932, and on that ground I object to it.

Mr. Alioto: Well, that's not what I am looking for. But here is what I am looking for. It is in the beginning. [1849]

On Plaintiffs' Exhibit 47 for identification reference is made on page 3 to a S. C. Du Tot in connection with a certain study.

Q. (By Mr. Alioto): Would that by any chance be you?

(Testimony of Stuart C. Du Tot.)

Mr. Holland: If the Court please, he is not supposed to be reading from this document, which would open up the whole period which your Honor has ruled——

The Court: What is the date of that?

Mr. Alioto: I want to ask this witness——

Mr. Holland: 1935.

Mr. Alioto: This is dated 1935, if your Honor please.

Mr. Holland: It is the same document——

Mr. Alioto: I desire to ask the witness whether, in 1940——

The Court: Objection is sustained.

Mr. Alioto: ——he had knowledge——

The Court: Objection sustained.

Q. (By Mr. Alioto): Mr. Du Tot, in 1940, at the time of your conversations with Mr. Burwell—strike that. Let's get that a little clearer.

At the time of your conversations with Mr. Burwell [1850] about which you have testified here on direct examination, did you have knowledge of something that was called the MacQuigg Report?

A. No, sir, I did not.

Mr. Alioto: Well, that takes care of that. That solves the problem for everybody, Judge, in a very easy way, so there was no need to get excited.

The Court: That's encouraging.

Q. (By Mr. Alioto): Did you ever see any of the ferro-vanadium produced by the Apex Smelting Company? A. No, sir.

(Testimony of Stuart C. Du Tot.)

Mr. Alioto: We have no further questions.

Mr. Archer: I have no further questions of this witness.

(Witness excused.)

Mr. Archer: Does your Honor wish to take a recess before I call the next witness?

The Court: We will take a recess.

(Short recess.) [1851]

Mr. Alioto: If your Honor please, I have discussed with Mr. Archer, counsel for the Union Carbide defendants, the letter I wanted to offer through Mr. Remmers, and Mr. Archer has now informed me that he has no objection to the offer without Mr. Remmers on the stand, and so I offer it at this time.

It is dated October 13, 1943, from Mr. Remmers to Mr. Swain, Mr. Pritchard, Mr. Gormely, Mr. Van Fleet and Mr. Price. There are just two short paragraphs that I would like to read from this letter, if your Honor please.

Mr. Archer: I would rather have you read it at some other time.

Mr. Alioto: Fine. I have no objection to doing that, either.

(The document referred to was thereupon received in evidence and marked Plaintiffs' Exhibit No. 155.)

Mr. Archer: Your Honor, as my last witness, I call Mr. Colvin.

WILLIAM H. COLVIN

called as a witness by and on behalf of the defendants Union Carbide, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Archer): Will you state your name and address, please? [1852]

A. William H. Colvin, Sarasota, Florida.

Q. What is your present occupation?

A. I am retired from business responsibilities now.

Q. During 1945 did you hold the position with the Crucible Steel Company?

A. Yes, I was president of Crucible Steel Company of America.

Q. When did you become president of Crucible Steel Company of America?

A. February 14th, 1945.

Q. I have the names of three men mentioned in connection with the Crucible Steel Company: a Mr. Felsing, Mr. Taylor and a Mr. Billingsley. What were Mr. Felsing's and Mr. Taylor's capacities?

A. Mr. Felsing was director of purchases for a good many years and died something like March of 1945. His successor was A. W. Taylor, who became director of purchases.

Billingsley was in the sales department at the time of 1945 and 1946; he was the manager of the Pittsburgh branch of the Crucible Steel Company.

(Testimony of William H. Colvin.)

He was manager of our warehouse there and conducted sales within the area of Pittsburgh.

Q. Is Mr. Taylor still alive?

A. No, Mr. Taylor died in October, 1956, I believe.

Q. During the period commencing with February 14, 1945, when you became president of Crucible Steel Company, until 1949, [1853] did the Crucible Steel Company buy ferro-vanadium?

A. In very large amounts, yes, sir.

Q. What is the Crucible Steel Company's principal line of business?

A. The line for which it is probably best known is tool steel in all forms, shapes, sizes and grades. It is active in stainless steel in all varieties, other than the common grades of carbon steels, all forms of open-hearth electric furnaces, vacuum melted alloy steels.

Q. Is the Crucible Steel Company a large producer of tool steel?

A. I believe it is the largest.

Q. From whom did you buy ferro-vanadium after you became president of the Crucible Steel Company until 1949?

A. If the "you" there means the company, our purchases were substantially from the Vanadium Corporation of America with an occasional lot to Carbide.

Q. Were you ever solicited by anybody from Carbide or Electro Metallurgical Sales for the pur-

(Testimony of William H. Colvin.)

pose of having Crucible Steel Company purchase vanadium products?

A. The "you" there means me personally?

Q. Yes, you personally. A. Yes, sir.

Q. By whom were you solicited?

A. By a man named John Swain, who was the president of [1854] the Sales Company, in charge of those sales for the Union Carbide Division.

Q. When did he first solicit your business?

A. I do not want to be too accurate as to that, but it was very shortly after I had assumed actual responsibilities. That occurred March 1st, and it was some time very shortly after that. It could have been in that same month.

The Court: What year?

A. 1945, sir.

Q. (By Mr. Archer): What was the occasion of this solicitation? Did he call you, or what happened?

A. He telephoned, introduced himself, and told me that he had a matter that was of considerable importance to himself, that he would like to discuss with me. He recognized that my quite recent arrival at Crucible made it somewhat awkward to have outside or new problems injected, but that he would like an appointment with me to discuss this matter.

We arranged a time and he came over to our offices and he called on me then.

Q. This was in the early part of 1945, I take it?

(Testimony of William H. Colvin.)

A. It was in March of 1945. It could have been the first few days of April, 1945.

Q. What occurred at your meeting?

A. I didn't know Mr. Swain. After the customary pleasantries of two strangers meeting, but two people who [1855] had common interests, we got down to the business that was the cause of the meeting. Mr. Swain asked me if I was familiar with the purchasing policy of our company as regards ferro-vanadium. He told me that the situation which prevailed was one giving to the Vanadium Corporation, their competitor, the great majority of our business, to almost the exclusion of themselves, that this situation had long been a source of distress to them.

It was irksome, perhaps somewhat embarrassing, and he wanted to know if I was familiar with it and if I was familiar with the reasons for it.

Q. And what did you say?

A. I told him that I was not, and therefore could not carry on this discussion with him any further than to tell him that I wasn't, but I would be very glad to post myself in respect to it. That would involve some inquiries in New York where we then were, and some inquiries in Pittsburgh with our purchasing people, and with the old established Crucible people. It might even involve some checking in Syracuse, where our largest tool steel installation capacity exists.

I had a schedule at that time of spending every other week in Pittsburgh. I was due to leave, I

(Testimony of William H. Colvin.)

think, the following week. If possible I would include the request for this information during that trip. I would come back to New York [1856] with the information if I was able to get it in that time. I would then want an occasion to review it and study it and see whether the data thus developed would support the division of our business that had been established within Crucible, and I would discuss it further with him at that time, and asked that he defer any further discussion until I was so informed.

I was the one who agreed to call him when I was ready for a continuation of these talks.

Q. Did you call him and have another meeting with him?

A. Yes, sir. I can't say whether that was the week after I got back or whether more time than that was involved, but it was a relatively brief time, in any event, and I called Mr. Swain. We made an appointment to meet. I wouldn't now say whether the meeting was at his office or whether he came to our offices. I can say that we did meet.

Q. What occurred at that time?

A. I told Mr. Swain that the volume of total business going out of Crucible to Electro Metallurgical was so very substantial, whether that was measured in dollars or whether it was measured in pounds of ferro alloys—the total in the proportion of our business was so substantial that I didn't see any reason why they should be dissatisfied with it or tell me that they were dissatisfied,

(Testimony of William H. Colvin.)

the volume of vanadium going to the Vanadium Corporation seemed like a reasonable [1857] way was to share our business, and that I had found nothing in the studies that I had made or the review of the reasons of our other people in establishing their policies to interpose any authority from the president's office to change that. [1858]

Q. By "total business" do you mean business in other products than vanadium?

A. Yes, entirely.

Q. What did he say on that occasion?

A. I believe he expressed "an understandable regret.

The most interesting thing, however, that he had to say was that he felt my calculations included an error or possibly an omission, and he pointed out to me that there were several ferro alloys which were necessary in the operation of our company and the production of our product for which his company was the only source; we needed to buy those; we did buy them from them; and yet no decision to buy from them was based on any competitive reason; they were the only place to go and get them. And he asked if in my calculations of the total volume, about which I had spoken, included those items, and I assured him that they did, although I didn't know what they were. He asked me if I was familiar with this situation, the single source, so to speak, and I told him that I was not; and he suggested that it would be a fairer way to analyze the total business, to deduct from

(Testimony of William H. Colvin.)

that total that I was being guided by the amount of these single-source, non-competitive items which were bought from them, not in competition but because they were the only source.

He asked me if I would give consideration to that approach and I told him that I would, [1859] I thought that it made sense, and I asked for time to have these figures developed, and that we would meet again and that we would see whether they were substantial or whether they were nominal or whether they would have any effect upon the overall situation.

Q. Did you then have another meeting with Mr. Swain? A. Yes, sir.

Q. And when and where did that occur?

A. That occurred relatively soon after the second meeting, in New York. I can't tell you where it was or any more accurately than that, except that it was not a very long time to gather this data.

I did get it. I did call Mr. Swain, told him that I was ready. He told me that he had his figures.

We met, we compared the figures, and, as I recall, they were within reasonable relationship or harmony.

I did make the deduction—or perhaps he did—and I think he asked me if that had a fact or a bearing upon the matter would it affect my decision or thinking. And I told him that having brought this subject up, I had gone somewhat further, Union Carbide has other divisions which serve the steel business, the steel industry, other

(Testimony of William H. Colvin.)

than Electro Metallurgical, National Carbon—are two of them—and from other units of the Union Carbide Company our company made also very substantial purchases. It seemed to me, and I expressed to Mr. Swain, that if we were going to deduct these [1860] items that he had selected, then it would only be sensible to include these items which I had not included in my personal analysis. Those figures were very substantial. The purchases of the items that Mr. Swain had selected were substantial in themselves but not in relation to the total figure. They represented an important business but not in the volume that we were, that Mr. Swain and I were, then talking about.

When we brought in these additional figures and we were operating, oh, five different steel mills, I think at that time, with sixteen, eighteen, nineteen electric furnaces in them going full; all of the or practically all of the electrodes which do the melting came from Union Carbide, and so on—when you add those figures in, the total figure then becomes overwhelming, of Crucible money going to Union Carbide divisions, overwhelming in the sense that the relationship between that total and the total of these single-source, non-competitive ferro alloys to which—which he had selected. And I told him that on the basis of the study that I had made originally or of the corrected studies we had made together later, that I saw no reason whatsoever to bring about a change in the pattern of our purchases which our purchasing people decided

(Testimony of William H. Colvin.)

upon was in our best selfish interests and that I would not make any change in the absence of some wholly new development, unforeseeable then and then unforeseen, which would justify changing or contemplating a change in our plans. [1861]

And then I told Mr. Swain that having brought this matter up and having had it considered and a decision reached, that I would ask him in the future to conduct his sales of ferro-vanadium in the purchasing office and not in the office of the president. And on that note we broke up.

Q. Well, subsequent to that time did the salesmen from Electromet or Union Carbide attempt to sell ferro-vanadium to Crucible Steel Company in the purchasing office?

A. Including Mr. Swain on down, yes, constantly.

Q. Turning to another subject, the Crucible Steel Company uses ferro-vanadium for making high-speed alloy steels, does it not?

A. Yes, sir.

Q. During the period that you were president of the Crucible Steel Company, to 1949, would a reduction in the price of ferro-vanadium from the \$2.70 range to a \$2.25 range have increased your purchases of ferro-vanadium for use in high-speed alloy steels?

A. The very short answer to that is no. I can elaborate.

Q. Would you give your reasons?

A. We don't buy ferro-vanadium for any other

(Testimony of William H. Colvin.)

reason than that our customers buy ferro-vanadium bearing alloys from us. We don't stock it or want to hold it or tie our money up in it. If our customers buy more, we buy more. If they buy less, we buy less. A drop of that nominal amount in the price of ferro-vanadium [1862] translated out into steel would have had, as I see it, no commercial impact whatsoever. We are talking about, really, peanuts. The highest vanadium content that I recall in high-speed tool steel, up to the wartime when tungsten high-speed steel was the leading brand, it was 1% vanadium. Under the impact of the war and the introduction of molybdenum, that went up to 2%. There were special varieties in small, tiny quantities that went much beyond that, but the stable, standard market variety carried 2%.

The tool steel itself, with this 2% in it, represents only 5% on the average of the cost of the finished tool, and the finished tool itself is a little point on the end of a great machine tool. The cost of running that is in the material it consumes, in shaping and drilling and forming parts for the ultimate assembly of the article to be finally sold to the public, the labor and the machine hours. The cost of that little tool point is not great but is one that is watched very carefully. So that we are talking about a percentage of a percentage of a percentage of a percentage of a percentage. It gets down to where to try and find that somebody would buy more automobiles or more washing machines or more refrigerators or bridges for a drop

(Testimony of William H. Colvin.)

of that sort in price of vanadium means nothing at all.

And do I answer your question?

Q. Yes. Would you have liked to have got a price reduction in ferro-vanadium? [1863]

A. We are buyers of services and raw materials which we convert into our finished product. Any economy was always greatly received and no questions asked. If we had felt that a reduction in the price was due us, that there was an exorbitant price, that is quite another matter; we would have taken steps.

As a voluntary offer to test out and see whether the market would expand, we would have welcomed it.

Vanadium, you understand, was a declining commodity for many years, except for a very brief time when the defense movement began, in the early times of the war.

Q. Did you ever meet with Mr. Burwell in 1946 or at any time?

A. I have never met Mr. Burwell. I don't know him.

Mr. Archer: I have no further questions.

Cross-Examination

Q. (By Mr. Alioto): Mr. Swain—did Mr. Swain ever offer you a price below that of Vanadium Corporation of America? A. No, sir.

Q. In other words, he offered to sell you at exactly the same price? A. Yes, sir.

(Testimony of William H. Colvin.)

Q. If he had offered you 10c or 15c off the price, would [1864] you have purchased from him as against the Vanadium Corporation of America?

A. Do you mean whether I would have purchased?

Q. Would you have purchased if that was the price differential between VCA and Union Carbide?

A. Do you want an answer to that question?

Q. Yes.

A. All right. Had that occurred, the normal course of events would have been to call our regular source and tell them that they were now asking us to pay a premium and that we were not willing to do it, as they automatically knew. Had they failed to be competitive, failed to meet that price, we would have changed sources.

Q. Now, did Mr. Swain tell you at any time that for some period of time the Vanadium Corporation of America was securing its supply of raw materials from his organization, the Union Carbide group?

A. I don't believe he was at the time I was president of Crucible.

Q. I didn't hear the answer.

A. I don't believe that was true when I was president of Crucible. I didn't know Mr. Swain before I was president of Crucible.

Q. Did you ever meet any other salesman from the Electro Metallurgical Company? [1865]

A. Yes, sir.

Q. Vanadium salesmen?

A. Oh, yes.

(Testimony of William H. Colvin.)

Q. Who were some of the men you knew?

A. The man that I knew best was Ward Miller, Vice President in charge of sales.

Q. Vice President in charge of sales?

A. Vanadium Corporation of America.

Q. Of Vanadium Corporation of America?

A. That is what you asked.

Q. No. I am sorry. I didn't make it plain, Mr. Colvin. I apologize. My question was whether besides Mr. Swain you ever met any other salesman or representative of the Union Carbide group.

A. Oh, yes.

Q. Who were they?

A. Mr. Du Tot, Mr. Remmers. I knew Mr. Priestley personally for many years.

Q. Did they contact you during this period of time? A. Oh, no.

Q. Had they contacted you before to sell vanadium or did you just know them socially?

A. I knew Mr. Priestley; he was a man to whom I went from time to time in the steel business, as a kind of a father-confessor. If I had a problem that I didn't know what to do with, [1866] I would go down and ask him what to do with it. He had been with Crucible, you understand, many years before. He knew a lot of our operations and our properties and our problems. I discussed with him various individuals that I was thinking of bringing into the company from the outside.

I did not know Mr. Du Tot, Mr. Swain, Mr. Remmers and others of their sales divisions before

(Testimony of William H. Colvin.)

I came to Crucible in New York. I had known their Western people where I came from.

Q. Did Mr. Priestley try to sell you vanadium?

A. Mr. Priestley was—— As the President in charge of their sales company, I don't think he would have done that. He didn't do it. I don't think he would have.

Q. In other words, your answer is, he didn't do it, is that right? A. That's right.

Q. He never asked you to buy from his company, did he?

A. I would have fallen over backwards if he had.

Q. Despite this friendship you had with him over so long a series of years, is that correct?

A. That's right. There were no purchases of vanadium of any amount before I came to Crucible.

Q. Now, how long had you known Mr. Priestley? A. From what time?

Q. From 19—from the time that Mr. Swain was in your office. [1867]

A. Mr. Swain was in my office in '45, and I think I became acquainted with Mr. Priestley in 19—not earlier than 1936 and not later than 1938.

Q. You say you visited him many times in connection with his being a kind of a father-confessor to you because of his prior history with Crucible?

A. That's right.

Q. Prior to the time that Mr. Swain walked in your office did you know any other salesmen from

(Testimony of William H. Colvin.)

Electro Metallurgical Company or the Union Carbide group?

A. In Pittsburgh or New York?

Q. Anywhere.

A. Yes, I knew them in Detroit.

Q. You knew the salesmen in Detroit. Who were the salesmen you knew there?

A. Why, I couldn't tell you who they were.

Q. Had you purchased vanadium from them before that time?

A. I just testified that my company then used only a very nominal amount, if at all.

Q. You mean the company in Detroit?

A. That's right.

Q. Well, now, is it your testimony that not until Mr. Swain walked in your office in April of 1945 did anybody try to sell you vanadium, anybody connected with the Electro Metallurgical Company?

A. Nobody had any business selling me vanadium at that time. I didn't buy any.

Q. Regardless of whether it was business or not, prior to the time Mr. Swain walked in your office nobody from the Electro Metallurgical Company tried to sell you vanadium? A. No.

Q. Is that right?

A. I didn't buy any vanadium.

Q. Now, then, when was that period of time—excuse me. Prior to the time you came to Crucible you were with what steel company?

A. The Rotary Electric Steel Company of Detroit.

(Testimony of William H. Colvin.)

Q. How long had you been with that company?

A. Since 1933.

Q. Since 1933? A. 1933 until 1945.

Q. O.K. Now, then, this conversation with Mr. Swain, the first time that anybody from Electro Metallurgical tried to sell you vanadium was in what month of 1945?

A. I would suspect March of 1945.

Q. March of 1945. Now, at that time there was an anti-trust investigation going on, wasn't there?

A. I have since been so advised.

Q. That the investigation was going on at the time Mr. Swain was in your office? [1869]

A. No, I believe that the investigation was then suspended because of the war.

Q. At least you had known that there had been an investigation in process at some time prior to March of '45? A. I didn't know, no.

Q. Well, you know it now?

A. I know it now.

Q. Yes. When Mr. Swain told you that there are many ferro alloys of which they were the only source, did he tell you which ones?

A. I can't answer that other than to say that I believe he did mention two or three.

Q. Do you know which ones they are of which they were the only source of supply? A. No.

Q. In other words, basically, what you told him, as I understand it, Mr. Colvin, is that you weren't going to recognize any distinction in the Union Carbide groups or divisions, that you were going

(Testimony of William H. Colvin.)

to try to balance the purchases as between those two companies; is that it?

A. I think that I went further than that and told him that we tried to give—see that our money went as far as our contribution could to maintain competition and more than one source for us. We had the same situation exactly in tungsten, which was a product of theirs, we wouldn't buy any of it. [1870] We bought it from another source who didn't make vanadium, for example. We did that with Vanadium Corporation as a way to keep two sources in the vanadium business.

Q. Now, finally, did you have some kind of contract with Vanadium Corporation of America?

A. I don't know, myself. I doubt that. We might have.

Q. Do you know whether you had a requirements contract with them?

A. I say I don't know. We might have. I didn't pay attention to those things.

The Court: Did you observe the relationship between these two companies as that of competitors or otherwise?

The Witness: Your Honor, they were very competitive, within my observation, extremely so, on quality, on service, on their solicitation—it was aggressive, and I am talking now about the presidents and vice presidents of those companies, whom I know personally. Yes, sir, they were.

Q. (By Mr. Alioto): How competitive were they on price? A. None.

(Testimony of William H. Colvin.)

Mr. Alioto: Thank you.

The Witness: There is no way to get a premium in the steel business. [1871]

Cross-Examination

Q. (By Mr. Holland): Mr. Colvin, I hope it wasn't just because we were the poor boy that you gave us the vanadium business, was it?

A. No, Mr. Holland. The activities of the Vanadium Corporation of America in starting out with this product, ferro-vanadium, as an alloy, they taught us the early steps of the processing; they, at their own expense, went out to the trade, to the people who were not only our customers but the customers of all of the alloy suppliers, spread the gospel about the value of this material, interested them; were directly responsible I think for Ford's active early interest which really made the vanadium business back before Moly took its place. Vanadium Corporation gave us excellent service at all times, and they were in our plants, at their expense, with technical advisers and counsel. If something was developed elsewhere that we needed to know about, that would help us, they would tell us. If we developed something, they would see that that was spread out to the trade and to competition, keeping everybody up to date, and we always felt, in my knowledge, that it was the early work of the Vanadium Corporation which did a great deal to popularize the conception of alloy steel, not just vanadium but— [1872]

(Testimony of William H. Colvin.)

Mr. Alioto: What period is the witness speaking of?

Mr. Holland: From 1938 on we are speaking of.

Mr. Alioto: Are you speaking only of the period from 1938 on?

The Witness: That is all my knowledge is.

Q. (By Mr. Holland): was any charge made for these additional services?

A. No, that is a service that goes along with the product.

Q. Were you speaking of your experience other than with Crucible?

A. I am talking about the American iron and steel mills in the growth of the alloy business.

Q. When you said the Vanadium Corporation of America made the early, I think you called it, effort to get the alloy known, what period were you speaking of?

A. I don't know what period that was. That was well back. I was still in school.

Q. How far back?

A. About World War I somewhere.

Q. Is it your testimony here that these two companies have been competitive since World War I down to the present time?

A. No, sir, I do not believe the Carbide Company came [1873] into the vanadium field until about 1926 or 1927, is my recollection.

Q. Is it your testimony that they have been competitive from 1927 down? A. Yes, sir.

Mr. Alioto: Now may I go into this problem?

(Testimony of William H. Colvin.)

The Court: No, you cannot. You really had no business asking that question.

Mr. Alioto: No; he answered Mr. Holland's question. I didn't ask that question.

The Court: We are not going into it.

Mr. Alioto: O.K., Judge. I didn't bring it up. He was answering Mr. Holland. It is not fair for a witness to give an impression of competition, and then not let us show the documents in this matter.

The Court: The Court has ruled on that a number of times, and we are not going back beyond 1938.

Mr. Alioto: But this witness, at Mr. Holland's hand, did do that.

The Court: I know, and that ends it.

Mr. Alioto: All right.

The Court: The only question the Court would ask the witness if it is embarrassing for a man from Florida to come to California.

The Witness: I lived two years in Oklahoma, too.

Mr. Alioto: Let me ask one other question, please.

Q. (By Mr. Alioto): Did you come up in the Crucible Company as a commercial man, or on the technical side? A. On the financial side.

Mr. Archer: All I can say, Mr. Colvin, is thank you very much for coming.

That is the end of our witnesses, your Honor. I believe Mr. Holland has some.

(Witness excused.)

Mr. Holland: I am afraid I have.

Mr. Bigler.

HAYWARD L. BIGLER

called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Q. (By the Clerk): Will you state your full name and address?

A. Hayward L. Bigler, 15055 Park Drive, Saratoga, California.

Direct Examination

Q. (By Mr. Holland): Mr. Bigler, you are now a resident of California, is that correct?

A. That is correct. [1875]

Q. Were you for some years a resident of Colorado? A. I was.

Q. Where did you live there?

A. At Cortez.

Q. How long did you live in Cortez?

A. From 1931 until 1955.

Q. Confining our questions to the period July 1, 1938, on, were you in the vanadium business in 1938 in any way?

A. Not in the early part of 1938. In the latter part I was—indirectly.

Q. What was the nature of that business?

A. I was supplying fuel oil to H. J. Kimmerle, Sr., for a small vanadium mill southwest of Blanding, Utah.

Q. What was your principal business, the oil business?

A. The oil distributing business.

Q. Will you tell the jury what further hap-

(Testimony of Hayward L. Bigler.)

pened in respect to that Kimmerle mill that you furnished oil to?

A. Mr. Kimmerle had some financial difficulties and shut down his operation, owing quite a few bills, including quite an expensive bill to me, and in the following year he sought to start the mill up again and came to me for some petroleum products, and because of his past due indebtedness I refused to sell him unless I had some assurance that he would be able to pay, and he eventually gave me an assignment on a portion of the funds to be derived from the sale of this product. [1876]

Q. (By the Court): Who is this you are talking about?

Mr. Holland: His name is Kimmerle. He had a vanadium mill at Blanding.

Q. (By Mr. Holland): This mill was at Blanding, wasn't it?

A. It was about 15 miles southwest of Blanding in the Cottonwood District in Utah.

Q. You eventually, I believe, took over that mill and operated it for the benefit of creditors, isn't that correct?

A. Well, he had further financial difficulties, and an attorney for creditors interceded and shut him down, and the creditors came to me and asked if I would take over the management of that mill, run it for the benefit of the creditors, and see if it would be possible to recoup some of their losses, and I, together with Mr. Usher and a bank at

(Testimony of Hayward L. Bigler.)

Cortez, acted as managers, and kind of conservators of the funds received from that operation.

Q. How long did you run that operation for the benefit of the creditors?

A. That began approximately in the latter part of September or the first of October in 1939, and as I recall it we shut it down in 1940, in February, because of some serious mechanical difficulties and failures.

Q. Where did you sell that oxide? [1877]

A. I believe that was all shipped to the Continental Ore Company in New York.

Q. Was that for foreign shipment?

A. As far as I know it was. We had no way of knowing exactly what the ultimate destination of those shipments were.

Q. What were you paid for it, do you remember?

A. I believe that we got as high as \$1.30 for some of that, but I am not sure whether we got that much for all of that, for V_2O_5 contained, that is, per pound.

Q. Did you get more than a dollar for all of it?

A. Yes, I believe we did.

Q. (By the Court): What year was that, now?

A. In the fall of 1939, and January, and possibly February, 1940.

Q. (By Mr. Holland): At that time did you know Mr. Leir?

A. No, I did not know Mr. Leir personally at all during that time. We made shipments to the

(Testimony of Hayward L. Bigler.)

Continental Ore Company in New York, and that was the market that Mr. Kimmerle had developed, and we had Mr. Kimmerle's son working with us at that mill, and we followed right on through with the marketing policies of the previous operation.

Q. In February of 1940 did you shut down the mill to rehabilitate it? You testified it was not working mechanically. [1878]

A. We shut it down and notified the attorney for the creditors that we had so much money at the present time, and asked whether or not we were authorized to spend that for major repairs, or whether or not they wished us to distribute it to the creditors, and after some discussion among themselves we were notified to turn the money over to the attorney for the creditors for distribution, and that was the end of that operation.

Q. Then another operation started?

A. Later on that year myself and one or two other associates decided that there was an opportunity in the vanadium business, and we contacted the owner of the claims that this mill was located on, a Mr. Frank A. Garbutt in Los Angeles, and negotiated a contract with him to lease the property and the old mill and to attempt to rehabilitate, or rehabilitate it as I saw fit, continue the operation, and pay Mr. Garbutt a royalty, as had been the previous arrangement with Mr. Kimmerle and our operation for the benefit of creditors.

Q. You did form a corporation to operate this venture?

(Testimony of Hayward L. Bigler.)

A. We did at a later date. That contract was negotiated in my name and in the name of H. J. Kimmerle, Jr., and Dan Milenski of Cortez, and later assigned to the corporation that was formed.

Q. What was the name of that corporation?

A. Blanding Mines Company. [1879]

Q. During the ensuing period was the operation conducted by the Blanding Mines Company?

A. From the time that the corporation was formed it was all conducted in the name of Blanding Mines Company.

Q. That was before you reopened the mill, wasn't it? A. That is right.

Q. What office did you hold in that corporation?

A. I was the president of the company.

Q. Who were the other officers?

A. Dan Milenski was one. I believe that he was secretary, that is, of the original group. And Fred Brinker was treasurer. And I believe we had as a director a Don Adams in Monticello, Utah, and Marvin Lyman at Blanding, Utah.

Q. When did you get back into operation after your shutdown in February of 1940?

A. Well, we operated some in 1940, and had further difficulties.

Q. Do you remember when you started operating in 1940?

A. No, I do not. I don't remember the exact dates, but it was in the latter part of the summer or fall, as I recall it.

(Testimony of Hayward L. Bigler.)

Q. To whom did you sell your product during the year 1940?

A. We shipped it to Continental Ore Company, as I recall it, or at their instructions, at least. The sale was made and consummated through their office. [1880]

Q. And that oxide was destined for the Apex Smelting Company in Chicago, is that correct?

A. I believe most of it went to Apex Smelting in 1940.

Q. Some of it went direct to Continental Ore?

A. It seems to me there might have been one or two small shipments that went direct to New York, but I wouldn't be too positive about that.

Q. Shortly after you started operating did you feel that with the expenditure of a reasonable sum of money you could double the capacity of that plant?

A. Yes, we thought we could.

Q. Did you try to secure financing from anyone?

A. Well, we tried a little bit locally, and then as an afterthought I believe we approached the Continental Ore Company and tried to get some financing through them in New York, with the proposal that we would like to repay it out of the product, the sale of the product, at least a percentage of the sale of the product.

(A document was handed to Mr. Alioto.)

Mr. Alioto: Do you know who the writer is?

Q. (By Mr. Holland): Mr. Bigler, will you

(Testimony of Hayward L. Bigler.)

look at that letter and see if you can tell me who the writer is, or was? That is a copy of it.

Mr. Alioto: We have no objection to the letter, [1881] itself, but I would like to ascertain who the writer was, if we can.

A. Yes. It says "S-e-c." Rather somewhat of a misprint. But Dan Milenski was the writer, I am sure, and he was secretary of the corporation.

Mr. Holland: I offer it in evidence as defendants' next exhibit in order.

Mr. Alioto: No objection.

(The letter referred to was thereupon marked Defendant V Exhibit 2-I in evidence.)

Mr. Alioto: We have no objection.

Mr. Holland: I wish to read to the jury the letter of September 13, 1940, to Continental Ore Corporation from Blanding Mines Company:

"We have carefully considered the possibilities of increasing the capacity of our mill, and we are of the opinion that capacity could be increased to 25,000 to 30,000 per month within three and a half months. We feel that our logical method of increasing the capacity is to use a de-liming process which we have access to and which is a patented process. By use of such de-liming process, the capacity could be at least doubled.

"In the matter of increase of output, it will take some \$20,000.00, and in this locality that is [1882] a considerable sum to raise. We have placed quite a large sum in the construction of the present mill and are now somewhat handicapped by lack of

(Testimony of Hayward L. Bigler.)

funds, and we would like to be able to raise those funds and repay out of sales. Do you know of any arrangements that could be made along those lines?

"We have access to a great quantity of ore that runs quite high in lime content, and since the ore we are working has some lime in it, it takes longer for the roast than it otherwise would, and also recovery is not so high. Reliable chemists inform us that by de-liming that our roasting time could be reduced by one-half and recovery increased by possibly 10%.

"Our development work has progressed quite well and we are well satisfied with our supply. Production has been somewhat handicapped by reason of the recent overhauling of the fuser, and we have a considerable quantity of red cake ready for the fuser. With additional capacity on the fuser and the de-liming process above mentioned, we will accomplish the needed results.

"Of course, we do not care to obligate ourselves for additional funds unless we are assured of a long time contract at a profitable price. [1883]

"Will you please outline to us a long term contract so that we may complete our analysis of the situation?"

The next comes on September 23rd, 1940, a letter from Continental Ore Corporation, Mr. Leir, to Blanding Mines Company:

"Gentlemen:

"We refer to your letter of September 13th regarding a possible increase in your production.

1700 *Continental Ore Company, et al., vs.*

(Testimony of Hayward L. Bigler.)

"Apex and ourselves have come to the conclusion that we must keep our funds liquid for the cash payments for our raw materials which, as you may imagine, run into considerable amounts.

"We therefore, unfortunately, cannot consider participating in the financing of your mill."

Then there is the suggestion that they apply to the RFC (continuing reading):

"We are, of course, prepared to make a contract with you for either a fixed quantity or, at your option, for your total monthly output for, let us say, a period of three months, renewable.

"We hope that some arrangement of the kind outlined above will suit you and we look forward to hearing from you further." [1884]

Q. (By Mr. Holland): Mr. Bigler, did Continental Ore Company, or Apex Smelting Company, ever at any time furnish you with any financing or financial help in connection with your mill?

A. Not at all.

Q. When you in your letter asked for a long time contract in order to spend this money on the mill, did you have reference to a three-month contract? **A.** We did not.

Mr. Alioto: If your Honor please, I think it is clear that this witness did not write that letter. He was asked what was said in a letter.

Mr. Holland: I will lay a foundation for this.

Q. (By Mr. Holland): Mr. Bigler, who ran the Blanding Mines Company, and who made their decisions in respect to their policies?

(Testimony of Hayward L. Bigler.)

A. I did to a great extent.

Q. And when important letters such as this were written, would you confer with the other officers before writing? A. That's right.

Q. Do you recall conferring with Mr. Milenski prior to the writing of this letter? A. Yes.

Q. And did he write this letter at your instructions?

A. He wrote it with my consent and approval.
* * * * *

Thursday, June 19, 1958, 9:30 o'clock a.m.

HAYWARD L. BIGLER

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Holland): Mr. Bigler, just before court adjourned yesterday, you testified to the fact that in the fall of 1940 you had applied for financing a long-term contract with Continental Ore Company, is that correct?

A. That's correct.

Q. And you had received a letter from Mr. Leir to the effect they would not indulge in financing and that he would give you a contract limited to three months duration. Is that correct?

A. That's right.

Q. What price were you receiving for your

(Testimony of Hayward L. Bigler.)

oxide from the Continental Ore and Apex in the fall of 1940, do you remember?

A. It was approximately a dollar to a dollar three cents a pound. I don't recall exactly at what period there were changes and whether or not that was f.o.b.—I believe that was f.o.b. Chicago, if it was a dollar, and maybe a dollar three at rail points in Colorado or Utah. And, if I remember [1888] correctly, we paid three percent—two and a half or three percent commission to Continental Ore for selling the product.

Q. And on the first of January, 1941, was a price change put into effect, do you remember?

A. I couldn't ascertain.

Q. To refresh your recollection, I will hand you a couple of letters and ask you if you can refresh your recollection from those letters.

A. (Examining.) Yes, I remember that.

Q. What change in prices was put into effect by Continental Ore and Apex on January 1st of 1941?

A. According to that letter, it indicates a dollar a pound f.o.b. Chicago.

Mr. Alioto: Counsel, may I see the letter from which the witness refreshed his recollection?

Mr. Holland: Certainly. I will put them in if you prefer. I am trying to hold the size of this record down.

Mr. Alioto: No. I just wanted to see it, that's all.

(Testimony of Hayward L. Bigler.)

Mr. Holland: I mean, I will do whatever you want to do.

Mr. Alioto: I have no preference.

Q. (By Mr. Holland): What change was made in the price paid at that time? [1889]

A. The reduction of three cents a pound, I believe—it was either two or three cents a pound. That was to a dollar a pound f.o.b. Chicago, according to that letter.

Q. Now, Mr. Bigler, how long did you operate after the first of January, 1941, do you remember, approximately?

A. We didn't operate very long in '41. I don't remember the date. We shut down to make some further improvements and changes in the mill, and, as I recall it, we did not resume operations other than on an experimental basis and test runs until the fall of '41.

The Court: You are speaking of Apex?

A. No, I am speaking of our own milling operation at the Cottonwood Mill at Blanding, Utah.

Q. (By Mr. Holland): And you say you started up again in the fall of 1941. Theretofore you had sold your product only to Continental Ore and Apex Smelting through Continental Ore, is that correct?

A. I don't believe we sold to any other parties during the operations when I had the part in it.

Q. In the fall or summer or about the time shortly before the time you reopened your mill,

(Testimony of Hayward L. Bigler.)

did you make any efforts to bring about an increase in the price you had been receiving?

A. Well, it was during the summer of '41 while we were doing the improvement work on the mill that we decided that we would investigate to find out if there were any other more [1890] favorable markets than we had, and Mr. Harrison, who was with us at that time, and Mr. Brinker, carried on some correspondence and made some inquiries as to where vanadium oxide was used in the industry and endeavored to get quotations from several different parties.

Q. And did you get quotations from different parties?

A. I think we had quotations from two or three.

Q. Including Vanadium Corporation of America? A. (Witness nods head.)

Q. Now, you produced some oxide in the fall of 1941, is that correct?

A. Yes, we produced some but I do not believe we had any great amount accumulated until late in the fall.

Q. And did you finally make a sale of that oxide?

A. I believe the next sale we made was to the Vanadium Corporation of America.

Q. Do you remember about when that was?

A. It was around either late in 1941 or very early in January in 1942, as I recall.

Q. Do you remember the price at which that sale was made?

(Testimony of Hayward L. Bigler.)

A. Dollar ten a pound f.o.b. mill, our mill at Cottonwood.

Q. Were there advantages other than the actual price in selling to Vanadium Corporation of America as opposed to selling to Continental Ore or Apex?

A. Yes. We had no expense whatever in transportation [1891] to rail heads. The Vanadium Corporation accepted our product molded in bricks. They furnished the shipping bags, and we had no expense as far as assaying was concerned, as we had had with shipments to North Continent Mines where we had—I mean North—I mean Continent Ore—Continental Ore, which, as I recall it, was paid one-half of Ledoux and Company's sampling and assaying.

Q. Did you feel that, all things considered, the price of a dollar ten paid by Vanadium Corporation represented the best offer you had?

A. Very much so.

The Court: What other offers did you have?

A. We had the offer from—we had an offer from the U. S. Vanadium Corporation, for one, and we had the offers from Continental Ore at that time, too.

The Court: What prices did they offer?

A. I think the U. S. Vanadium offered 90 cents a pound, if I remember correctly. I don't believe we had any other offer from them. And that was early in the summer of '41 we contacted them.

And there was a lot of correspondence with Con-

(Testimony of Hayward L. Bigler.)

tinental Ore, back and forth, on the price, and I don't recall exactly what varied offers were made by them. It started out at a dollar two or a dollar three, and I think they gradually increased it up to the equivalent around a dollar fifteen [1892] cents f.o.b. Chicago, we paying three percent commission on that, I believe, for—but I can't be too sure unless I have the correspondence, because my memory is a little bit hazy on what occurred back sixteen, seventeen years ago.

Q. (By Mr. Holland): Was a dollar ten from Vanadium Corporation of America a better price, all things considered, than a dollar fifteen, offered by Continental Ore?

A. We considered it so because there were no transportation costs, no assaying costs, no packaging costs, no freight at all to pay.

Q. In other words, V.C.A. picked up your ore right at your mill, is that correct?

A. I might say, the stuff was weighed and we could pick our check up at Monticello the next day for 80 percent of it.

Q. There is in evidence a letter, in Exhibit No. 131, which is a letter from Blanding Mines by Dan Milenski to Apex Smelting Company, dated January 9, 1942, which states:

"At the advice and recommendation of the owner of our claims, it will be necessary for us to dispose of our product here. We regret very much that we will be unable to deal with you."

Do you know about that letter?

(Testimony of Hayward L. Bigler.)

A. Yes, I recall such a letter.

Q. What did he mean by "at the advice and recommendation of the owner of our claims it will be necessary for us to [1893] dispose of our product here"?

A. Well, Mr. Milenski worded that letter, as I recall it, because of the fact that Mr. Garbutt received a royalty that was based on our net f.o.b. Blanding, and because of the fact that the dollar ten was in our opinion just as good or better because of the fact that we did not have to grind and we did not have the losses that might be incurred from grinding and the other expenses, that we would be better off to sell locally, that the net return would be at least a cent or two a pound greater than if we went to the expense of grinding and shipping to Chicago, and we did not care to install the necessary equipment for the grinding of the product that came from the mill molded in bricks, approximately a hundred pounds in size.

Q. Well, now, did Mr. Garbutt put any pressure on you to sell the Vanadium Corporation of America?

A. I don't believe that he did. I think that it was strictly an economic factor as far as he was concerned, and knowing Mr. Garbutt (as I did, the dollar counted with him, and if he figured there was some net advantage to us, why, he would definitely recommend it to be sold. In fact, I might say, I don't recall exactly the wording in the old

(Testimony of Hayward L. Bigler.)

original contract that we had with Mr. Garbutt, but he had a profit-sharing clause in that, too.

The Court: Who is Mr. Garbutt, now? [1894]

A. He was the owner of the claims on which the mill was located that we were operating.

Q. (By Mr. Holland): In other words, you consulted with him before determining where to sell your product because he had an economic interest in it?

A. That's right. He definitely had an economic interest in our operation, either through royalty or profit-sharing agreement.

Q. Well, now, along in the spring of 1942, as shown by Exhibit 131, you asked on March 27 Mr. Leir to submit the best price and for a six months' --and to take your output for a six months' period, and he came back and offered to take your output at \$1.20 your nearest station. "Acid must be crushed to one-eighth inch and down. We return bags freight collect."

And you turned that offer down.

Will you state why?

A. Well, as I recall, at that time we conferred again with Mr. Garbutt and he thought that inasmuch as we were getting what was considered to be a satisfactory price at that time and this was going to require the installation of crushing machinery, and again the inconvenience of the dust in the mill, which was irritating, and the dust losses, that we probably would be better off to continue

(Testimony of Hayward L. Bigler.)

to sell the product in the form that it came from the mill, instead of crushing. [1895]

Q. (By the Court): Did you have any other source for the ore as it came from the mill except the Vanadium Corporation?

A. The offer that came from Continental here by this letter that Mr. Holland just referred to.

Q. (By Mr. Holland): At that time you were selling your oxide to V.C.A. for \$1.10 picked up at the mill, is that correct?

A. That is right.

Q. You considered that, all things considered, that was better than \$1.20, in view of the installation of the crushing equipment?

A. Well, no, we didn't consider it—I mean, we didn't consider it was any better than the \$1.20, but because of the fact that the cost of the crushing equipment and the cost of crushing was going to run that cost up, we couldn't tell exactly how much. But if we had to amortize the cost of the crushing machinery, depending on how long it was going to be used, it might have run that cost up to even more than the \$1.20, if it was only for a comparatively short period of time.

Q. And then you had the other advantages that you spoke of before, is that correct?

A. That is right.

Q. (By the Court): Was your decision to sell, then, as you sold it, based [1896] upon what you considered economic reasons?

A. Yes, and because of the fact that Mr. Gar-

(Testimony of Hayward L. Bigler.)

butt had the privilege of, at any time, under his contract, asking us for a percentage of the profits, and he could even have stepped in and, as I recall, have bought a half-interest in our milling operation. We had to confer with him, and his recommendations were that inasmuch as this was apparently only on a temporary basis, and inasmuch as we had a very satisfactory outlet at \$1.10 a pound in the brick form, we would probably be better off to continue to sell as we had for the previous few months to V.C.A. at \$1.10 net to us f.o.b. our mill. We had no trucking expense, no packaging expense, they picked it up with their own truck, we weighed it at the mill, it was re-weighed when it got to its destination, sampled, we were furnished with the pulp, the settlements came through, we ran our own analysis in our own laboratory, and no expense to us at all after it was picked up at the mill.

Q. If you had sold to Continental Ore what would you have been required to do?

A. We would have been required to grind that to one-eighth inch, which we didn't want to do. We didn't have the facilities to do it, and we didn't care to install them. We would have been required to ship that in tight packages, because one-eighth inch stuff has also even dust. It would have had to be dust-proof containers. And in the event of a damaged [1897] container, there could have been loss incurred in the shipment.

The grinding of fused vanadium oxide produces a very irritating dust, which actually, sometimes,

(Testimony of Hayward L. Bigler.)

if the men got too much of it, resulted in a form of pneumonia, and we just didn't care to have that condition existing in the mill.

(The letter formerly referred to was marked Defendant V Exhibit 2-J in evidence.)

[See Book of Exhibits.]

Mr. Holland: I would like to read Defendants' Exhibit V 2-J, being a letter of March 16, 1942, from Mr. Leir to Blanding:

"As you can see from the enclosed clipping, prices for ferro alloys will remain unchanged during the second quarter. However, we have an idea which makes it possible for us to pay our suppliers an especially high price, which would work out in your case to be as high as \$1.20 f.o.b. Blanding."

Q. (By Mr. Holland): At approximately this time Vanadium Corporation purchased your claims from Mr. Garbutt, did they not?

The Court: What was that?

Q. (By Mr. Holland): Vanadium Corporation of America purchased the Garbutt claims from Mr. Garbutt, the claims that Blanding Mines Company had a lease on, is that correct?

The Witness: What was the date of this [1898] correspondence?

Mr. Holland: This was back in March.

Mr. Alioto: March 16, 1942.

A. It was subsequent to that, as I recall it—sometime in April—that we were notified that such negotiations were about to be consummated, and I believe it was after the 1st of May that we were

(Testimony of Hayward L. Bigler.)

notified definitely that the deal had been closed and signed.

Q. (By Mr. Holland): And thereafter, early in June, you made an agreement, a supplemental agreement, with the Vanadium Corporation, under which you took the cream of the claims around your mill and continued to operate on those, is that correct? A. Yes.

Mr. Alioto: Of course, we were accused of asking leading questions, your Honor. We will object to that as leading. If they have a contract, they should put the contract in.

The Court: It is a leading question.

Mr. Holland: You can put it in if you want.

Mr. Alioto: Do you have the contract?

Mr. Holland: Have you got it?

Mr. Alioto: Yes. I would like to put it in.

Q. (By Mr. Holland): Do you recall approximately when that contract was [1899] made with the Vanadium Corporation?

A. Well, it was around the first part of June, as I recall it, that we consummated the revision of the contract.

Q. Did that agreement with the Vanadium Corporation require you to sell their oxide to the Vanadium Corporation? A. No, it did not.

Q. There is in evidence a letter dated June 20th from Mr. Leir to Blanding in which he says:

"The Apex Smelting Company forwarded your letter of June 16th to us and we take pleasure in enclosing herewith a schedule showing the prices

(Testimony of Hayward L. Bigler.)

at present paid by the Apex Smelting Company for fused vanadium oxide."

And those prices run from \$1.10 on small lots to \$1.15 on lots in excess of 10,000 pounds.

And on June 23rd you wired:

"Letter received. Quotation not satisfactory."

The Court: How was that?

Mr. Holland: "Letter received. Quotation not satisfactory."

Q. (By Mr. Holland): Now, Mr. Bigler, shortly after you asked for this quotation from Apex your mill burned down, I believe, did it not?

A. That is right. [1900]

Q. When was it reopened?

A. Well, the Defense Plant Corporation, as I recall it, was the government agency that stepped in and rebuilt the mill for us. It was not a duplicate of the old mill, but they did rebuild a mill of approximately a 15-ton-per-day capacity. I believe it was in 1943, in the early part of the summer, that we got that mill into operation.

Q. And did you operate that mill from that point on?

A. No, we operated that mill for approximately two months, but it had a different type of roast. It had that batch run that the Defense Plan Corporation engineers were offering and insisting that we put in, and it was not satisfactory as far as recovery, and neither was it satisfactory as far as the quality of the product was concerned, and the two months that we operated we operated at a loss.

(Testimony of Hayward L. Bigler.)

Q. What did you do then?

A. We shut the mill down. I had asked for more subsidy or assistance, or to operate on a cost-plus basis, from the governmental agencies at that time and was turned down on it. Also I asked if we could expect to be paid for uranium concentrate, which I knew was being recovered at other mills in the Plateau area, if we installed a step to recover that, and that was hush-hush. They wouldn't even discuss uranium with us.

So we shut down and negotiated a contract to sell over [1901] to the Metals Reserve Corporation, and from there on confined our activities to mining.

Q. And that ore was destined for Metals Reserve mill?

A. It was delivered to whatever stockpiles Metals Reserve designated.

Q. How long did you sell ore to the Metals Reserve program, do you remember?

A. Until they ceased buying, which, as I recall it, was around the first of March of 1944.

Q. What did you do then?

A. We decided to try to reopen the mill and run again. I didn't quite approve of it, but Mr. Brinker was our engineer and metallurgist. He thought we ought to do it. And so I agreed to go along with him on a short period of time experimental basis and see whether or not we could improve the recovery that we had gotten before and make it profitable.

Q. And did you reopen the mill?

(Testimony of Hayward L. Bigler.)

A. Yes, we did.

Q. At that time did you approach anyone with respect to purchasing your product?

A. Yes. We, I think, approached more than one, but I don't recall. Mr. Brinker was in charge of that. And we found that at that time there was no longer an urgent need for fused vanadium oxide and the market was extremely dull.

Q. Did you approach Continental Ore Company? [1902]

A. Yes, I believe we did. Either Mr. Brinker or Mr. Milenski, on behalf of Blanding Mines Company, started correspondence with them.

(A document was handed to Mr. Alioto.)

Mr. Alioto: We have no objection to any of this material.

(The exchange of correspondence referred to was marked Defendant V Exhibit 2-K in evidence.)

[See Book of Exhibits.]

Mr. Holland: Exhibit 2-K, of which I shall read portions, consists first of a letter of February 8, 1944, to Mr. Leir, from Blanding Mines, or probably—simply signed by Milenski (reading):

"In line with your telephone conversation yesterday I talked at length to Blanding Mines' engineer, Mr. Fred A. Brinker, Durango, Colorado, concerning the probable disposition of this concentrate. I found that Mr. Brinker has been in contact with both U. S. Vanadium Company and Vanadium Corporation of America. However, he has dealt with

(Testimony of Hayward L. Bigler.)

neither, and as far as Mr. Brinker is concerned, he was willing to make an equitable deal with your company, as I advised over the phone. The process which Brinker discovered while in the employ of Blanding Mines is the separate property of Mr. Brinker.

"Blanding Mines controls quite a number of claims, [1903] and with these claims and others we could acquire or control it is our opinion that we could, through this process, concentrate and treat the concentration and recover approximately 50,000 pounds of vanadium and a considerable quantity of uranium every month.

"Mr. Brinker suggests that if you could spare the time to make a trip to this section, he believes the same highly desirable and advisable, for the reason that you could see these properties and could see the mills in this territory, and in addition you could get a complete picture of the actual mining and mill costs and production practices and problems.

"Blanding Mines Company's records are kept in great detail, and we have cost analyses of every phase of the operation.

"We would believe that it would be unavailing to meet in any location other than here for the reason that you ought to familiarize yourself with the production of vanadium and uranium.

"I believe that Blanding Mines would be interested in working out a joint undertaking, or some other arrangement whereby we could work in

(Testimony of Hayward L. Bigler.)

harmony and to the mutual advantage of each other, and that such an arrangement is highly desirable on account of your [1904] marketing setup and your marketing ability, and our milling and producing experience.

"To utilize Mr. Brinker's process we would need a concentrating mill and a treatment plant. Expansion should take care of itself. The costs of recovery by this process will be much less than it has been in the past. Whether or not others would be licensed is another problem."

And in answer to that——

The Court: Who wrote that letter?

Mr. Holland: That was written by Mr. Milenski of Blanding Mines to Mr. Leir.

In answer to that, on the 14th of February, Mr. Milenski received a wire from Mr. Leir reading as follows:

"Just received your letter of the eighth. Intend to be in Colorado very shortly and probably leave before end of month. Would like to bring friends with me interested in financing. Has new process been actually proven on vanadium ore and on which scale? Please answer this again as detailed as possible by wire."

The Court: What question was to be answered?

Mr. Holland: The question about Brinker's concentrating process.

Then on the 18th a wire from Mr. Leir:

"Will arrive Grand Junction, La Court Hotel, Wednesday evening March first and be available

(Testimony of Hayward L. Bigler.)

Thursday and Friday March second and third. Must leave Grand Junction Friday evening for Denver. Please arrange to come to Grand Junction with your associates."

Mr. Milenski wired Mr. Leir:

"Suggest you arrange to have us meet you in Alamosa."

Mr. Alioto: May we have the date of that wire?

Mr. Holland: It doesn't say; there is nothing on it to show.

Mr. Alioto: All right.

Mr. Holland (reading): "Suggest you arrange to have us meet you in Alamosa. You may get the train from Denver to Alamosa in the evening. This would permit you to examine our mining and mill records in Durango, Colorado, and then we could go to the mining districts near the mill and we could take you to Grand Junction if you wish. Deem it advisable for you to have about three days in this territory, as we desire that you thoroughly familiarize yourself with our operations and holdings."

Q. (By Mr. Holland): Mr. Bigler, as a result of these letters and wires, what happened?

A. Nothing. [1906]

Q. Did you meet Mr. Leir in Grand Junction?

A. Oh, yes. We went up there and found quite a group of others there, also.

Q. Was there anyone interested in financing the project?

(Testimony of Hayward L. Bigler.)

A. Not at all. Couldn't even get the matter discussed.

Q. What did you discuss in Grand Junction?

A. As I recall it, there was an effort being put forth to form an association of ore producers, independent association of ore producers. I forgot what the proposed name of it was. [1907]

The Court: What conversation did you have with Mr. Leir at that time?

A. Very little. I don't recall, but it was very apparent that, he told us, they were not at all—I will say that he told us they were not interested in financing any milling operations.

Q. (By Mr. Holland): Did you discuss the question of a contract for him to take the product of your mill at that time?

A. Yes. I believe it was at that time—it was about that time. And I do not recall definitely as to whether or not we had much of an opportunity to discuss the contract at Grand Junction or whether we resumed our discussion by correspondence on a contract for the product of any mills that we might operate in the future.

Q. Well, now, as a result of that meeting in Grand Junction, Mr. Leir submitted to you a proposed contract for the purchase of the product at your mill, did he not?

To refresh your recollection, I show you Exhibit 139.

A. (Witness examining.) Yes, that contract was submitted.

(Testimony of Hayward L. Bigler.)

* Q. Do you recall a contract being submitted to you?

A. As I recall it, it was delivered to Mr. Milenski.

Q. Do you recall discussing it with Mr. Milenski? A. Definitely. [1908]

Q. And do you recall that Mr. Milenski wrote an answer? A. Yes, he did.

Q. In response to the contract?

A. Yes.

Q. This is a contract or a draft of a contract with the blank day of March, 1944, between Blanding Mines Company, party of the first part, and Continental Ore Company, party of the second part.

I shall just read certain portions of it and Mr. Alioto, of course, can read anything that he might consider significant.

Paragraph I recites:

"Continental undertakes to receive delivery of the entire output of vanadium pentoxide as produced by Blanding as the same shall or may be received for delivery from time to time by Continental, but subject to the limitations hereinafter in this agreement contained, and Continental undertakes and agrees upon the delivery thereof to pay to Blanding the purchase price thereof, and Blanding covenants and agrees that during the life of this contract that it will not sell or offer for sale any vanadium pentoxide unless and until Continental shall give notice that it will not accept de-

(Testimony of Hayward L. Bigler.)

livery of the same and then only upon the terms and conditions hereinafter in this agreement more particularly provided."

Now, in his letter to Mr. Leir of March 24, which is also part of this agreement and which is written to state Blanding's position in respect to this contract, Mr. Milenski states:

"In Paragraph I of your contract, the recital is 'Continental undertakes.' Throughout this contract we notice that 'Continental undertakes' and in most instances 'Blanding agrees.'"

"Paragraph I also states that you will receive delivery of the entire output of vanadium as the same may be received from time to time for delivery. This is definitely objectionable, and we insist that you agree to take our entire output up to 50,000 pounds of V₂O₅ contained. Of course, at the present time we can only make about 15,000 pounds per month and as per our conversation with you in Grand Junction, we realize that we will need financial assistance to increase the output above 15,000.

"Paragraph I is further objectionable in that the privilege is left with Continental to give notice that it will not accept delivery. If Continental would not accept delivery, we could only sell upon such terms and conditions as you have set forth. We believe the contract should be a contract in which you [1910] would unconditionally agree to buy and we agree unconditionally to sell. However, if you would desire or need some arrangements to

(Testimony of Hayward L. Bigler.)

cease buying, we believe that at least six months' notice should be given. Of course, some other arrangement might be worked out for your protection in the event the market should decline to the point where you could not accept. The suggestion of six months' notice is purely arbitrary and three months might be sufficient."

Do you recall that clause in the proposed contract? A. Yes.

Q. And reaction to it? A. Yes.

Q. Then Paragraph IV says:

"The price of one dollar ten per pound vanadium pentoxide is based upon two percent sodium Na_2O , and such price will be increased or decreased for any sodium Na_2O above or below the two percent with pro rata adjustment for fractions."

Now, had you ever been penalized for any excess sodium oxide over two percent in your product before?

A. It had never been mentioned at any time.

Q. And did you at this time have an analysis made to determine what the sodium content was of your oxide? A. Yes, we did. [1911]

Q. And how much was it?

A. I think the average was between six and seven percent on all previous shipments that we had retained samples from.

Q. So that penalty for any sodium oxide over two percent would have materially affected the price that you had received under this proposed contract, is that correct? A. Yes.

(Testimony of Hayward L. Bigler.)

Q. Now, Mr. Milenski in respect to that paragraph says:

"As to Paragraph IV in which you recite the two percent sodium oxide, it was our understanding that this was to be based on sodium instead of oxide, and we now suggest that the minimum sodium content be based upon our average sodium content in the fused black, which we have made in the past. We believe that we can hold the sodium to a minimum. However, we desire to ascertain what the sodium content was in our former production before we commit ourselves to hold to an agreed minimum. After we have agreed upon the minimum, the pro rata adjustments either upward or downward could easily be arrived at. In this connection we submit that there is nothing in the proposed contract which clarified the adjustments which should be made."

Now, subsequently the exhibit shows a letter was received by Blanding Mines from Continental Ore signed by [1912] Mr. Leir:

"We are in receipt of your wire of March 24, and after considering all angles, we feel that at the present time it would not seem advisable for us to enter into a contract as suggested by you without the framework of an agreement as outlined in the draft we sent you. We hope that you will understand our position. We believe that a straight purchase contract does not do justice to the general situation which should be covered by

(Testimony of Hayward L. Bigler.)

the agreement which we now have under discussion.

"We trust that in the near future you will be able to clarify the points which you say need additional thought. Looking forward to hearing from you in this respect, we are,

"Yours sincerely, Continental Ore."

The Court: Did you finally enter into a contract with Continental Ore?

A. No, we didn't.

Mr. Holland: The wire of March 24 to which this refers, I would like to put in evidence.

Mr. Alioto: May we see it?

(Between counsel.)

Q. (By Mr. Holland): Do you know who sent this wire, Mr. Bigler? [1913]

A. It is my handwriting in pencil on the bottom. I presume that the wire was actually sent by Mr. Milenski after he and I discussed it.

Mr. Alioto: We have no objection, on that identification.

(Wire March 24 to Continental Ore from Milenski received in evidence and marked Defendant V's 2-L.)

[See Book of Exhibits.]

Mr. Holland: This is a wire to Henry John Leir, Continental Ore Company:

"Contract received. Some points need clarification. We suggest that while these points are being discussed that you agree by letter to purchase our entire output up to 20,000 pounds vanadium pent-

(Testimony of Hayward L. Bigler.)

oxide per month for a period of nine months at a price of \$1.10 per pound contained of 85% grade or better less carload freight Utah shipping point to New York. Letter follows."

And there is some writing in pencil, which is difficult to read. I will let Mr. Alioto read it if he wants to.

Q. That was the wire, was it not, in which the letter of March 24 that I have just read was in answer to? A. I believe that is right.

The Court: That is the letter in which you raised certain objections to the contract?

A. That is right. [1914]

Q. (By Mr. Holland): Now, as you stated, I believe, Mr. Bigler, you did not enter any agreement with Mr. Leir at this time, is that correct?

A. That is correct.

Q. Did you continue to operate the mill?

A. Well, as I recall it, this was in March of '44, the Metals Reserve ore-buying program had ceased, the mill had been idle there for several months, and we began in March to recondition the mill and make a few improvements and changes, and exactly on what date we resumed production, I am not sure, but it was in March or early in April, latter March or early April that we resumed the operation actually.

Q. And how long did you operate?

A. Oh, I would say, as I recall it, it was less than two months or not to exceed two months.

Q. And why did you shut down?

(Testimony of Hayward L. Bigler.)

A. We weren't able to negotiate any kind of a suitable market and find a satisfactory outlet, and our cost was so high that the coverage was not too good, we just decided it was economically unfeasible for us to try to operate the mill and we would be better off to shut it down than to continue to lose money.

Q. If you had been able to negotiate a contract with Continental Ore, would you have continued to operate the mill?

A. Well, if we had been able to negotiate a contract [1915] with Continental Ore at a satisfactory price——

Q. At \$1.10?

A. Yes. We thought we could operate at \$1.10. As I recall it, we estimated our costs, after the payments of rental to the Defense Plant Corporation, to be somewhere in the neighborhood of a dollar a pound.

Q. Now, I believe by the time you shut down you had produced about 12,000 pounds of oxide, is that correct?

A. I believe that's about correct.

Q. And did you offer that oxide to Mr. Leir?

A. Yes.

Q. Did he buy it? A. No.

Q. State, if you can, a little more fully just what happened in respect to that transaction.

A. He wanted us to ship a small quantity and we didn't want to make shipments in small quantities because of the transportation factor, and we

(Testimony of Hayward L. Bigler.)

figured that if we could not negotiate a contract to take our entire output from time to time as we saw fit to ship it at a satisfactory price, there was certainly no object in operating the mill.

Q. Mr. Bigler, the highest price you charged for vanadium oxide during March of 1942 was \$1.10 f.o.b. mill paid by V.C.A., is that correct?

A. That's right. That's the highest price that we ever [1916] received during the period from '41 on.

Mr. Holland: We offer at this time in evidence the O.P.A. general price regulation adopted April 28, 1942, to take effect May 11, 1942.

Mr. Alioto: No objection.

The Court: Can you stipulate how long that was in effect?

Mr. Alioto: Yes. I will take Mr. Holland's statement on that, if your Honor please.

Q. (By Mr. Holland): How long was this in effect?

Mr. Archer: April '48.

Mr. Holland: Until April '48?

Mr. Archer: '46, it was. This was in effect until November 1943 exhibit which I have put in, which had the specific regulation——

Mr. Neaher: It superseded——

Mr. Archer: Just the same prices continued then until 1946.

Mr. Alioto: Do you tie it into the 1946 election? I was wondering what connection the O.P.A. with the 1946 elections.

(Testimony of Hayward L. Bigler.)

We will stipulate it went up to the 1946 elections.

Mr. Holland: Will you also stipulate, Mr. Alioto, that this covers vanadium oxide, this regulation?

Mr. Alioto: We will stipulate that the document covers what it says it covers. If you have another document covering vanadium oxide specifically, then I think it ought to go in.

Mr. Holland: This is the statement of considerations for Regulation 489 which we offer in evidence in conjunction with this exhibit.

Mr. Alioto: What is the source of this document, Mr. Holland? May I inquire what is the source of this document?

Mr. Neaher: That confirms the fact that this does apply to ferro-vanadium. If you are willing to stipulate, we don't need the document.

Mr. Alioto: What is the source of the document?

Mr. Neaher: That is the government which was attached to the other exhibit.

Mr. Alioto: Is this issued by the government?

Mr. Neaher: Yes.

Mr. Alioto: I have no objection to this going in then, if your Honor please, none at all.

(Price regulations admitted into evidence and marked Defendant V's Exhibit 2-M.)

[See Book of Exhibits.]

Mr. Holland: That is all.

The Court: What happened to the mill, what did you do with the mill?

A. The mill, in '44, after we shut it down we

(Testimony of Hayward L. Bigler.)

turned it back to the Defense Plant Corporation.

The Court: That is the government?

A. Right. See, they built—rebuilt the old mill or they built a new mill for us after the fire in June in 1942.

The Court: You had no further control over it?

A. Well, we had the operation of it but the title to the mill itself remained with the Defense Plant Corporation, and if we had had operated it sufficiently long to pay out at so much per pound for the product, we would have eventually acquired title to it, but we didn't operate sufficiently long, it was impossible for us to operate to make a profit. We would have been broke and badly in debt if we had continued to try to operate that mill.

The Court: And when was it you determined to give it back to the government?

A. It was in the latter part of '44, some time after July 1st, and I don't remember the exact date, your Honor.

The Court: Very well. You can cross-examine.

Cross-Examination

Q. (By Mr. Alioto): There came a time when V.C.A. made some kind of a deal with Garbutt, didn't there?

A. Are you referring to the acquisition of the claims?

Q. Yes. A. Yes.

Q. And after that they gave you a little trouble, didn't they? [1919] A. Who?

(Testimony of Hayward L. Bigler.)

Q. Garbutt. After he made his deal with V.C.A., he gave you a little trouble, didn't he?

A. Yes.

Q. He put a little pressure on you?

A. What do you mean now, "a little trouble"?

Q. Well, he charged you with bad faith, among other things, after he made his deal with V.C.A., didn't he?

A. That's right.

Q. Sure. And he tried to close you down, didn't he?

A. No, he didn't try to close us down.

Q. He sued you, didn't he?

A. He sued us.

Q. And he asked for an amount of money which had he won would have closed you down?

A. But his suit was based on asking us to pay for something that we had already paid for.

Q. All right. And this happened only after he made his deal with V.C.A., didn't it?

A. May I go a little further?

Q. Yes, you may say anything you want, Mr. Bigler.

The suit that Mr. Garbutt filed against us was thrown out of the District Court in Salt Lake City.

Q. Yes?

A. The judge that heard the appeal, sent down an order [1920] that it should be heard, there should be conducted a trial, and we defeated Mr. Garbutt

(Testimony of Hayward L. Bigler.)

in the trial. It was appealed again and we defeated him in the appeal.

Q. Yes.

A. Is that conclusive?

Q. Yes. And I congratulate you for doing that, for winning over Garbutt, because you should have won over Garbutt, because the claim of bad faith he brought against you was false, Mr. Bigler. But the fact remains he did not bring that claim and try to close you down until he made his deal with V.C.A., isn't that right?

A. Well, that is right.

Q. And didn't you tell Mr. Leir at the hotel in Grand Junction that V.C.A. and Garbutt were putting tremendous pressure on you?

A. I don't recall.

Q. And didn't you also tell him at that time that you were looking to an independent supply because you knew that V.C.A. would put you out of business if they continued?

A. That I was looking for an independent supply?

Q. Yes.

A. I wasn't looking for an independent supply of anything.

Q. An independent outlet, I mean.

Q. (By the Court): Did you make that statement to Leir?

A. It is probable that we did. I don't recall. Because we were definitely looking for any advantageous outlet we could get at any time.

(Testimony of **Hayward L. Bigler.**)

Q. (By Mr. Alioto): Let us get the actual chronology of the way this thing [1921] developed. Up until toward the end of 1941 you were selling your product to the Continental Ore Company, and you were very much satisfied with the sales price you were getting?

A. No, we were not satisfied with the sales price we were getting or we would not have been out looking for a better market.

Q. What was the sales price you were getting?

A. About \$1.00 to \$1.02, less commission.

Q. And then he offered you \$1.05, didn't he?

A. I don't recall the progressive stages in which the price was increased.

Q. And at the time you got that offer of \$1.05 you said, "We particularly like the sound of that \$1.05," didn't you?

A. What is the date of that?

Q. Let me show you a letter of November 19, 1941, which indicates, Mr. Bigler, that you went out to see some football game in Denver, but aside from that will you be good enough to look at the last two paragraphs of that letter?

The Court: You need not tell how the game came out.

Mr. Alioto: I just hope your team won, Mr. Bigler.

A. Mr. Milenski wrote the letter. It is his signature.

Q. (By Mr. Alioto): Yes, we have had a lot of letters by Mr. Milenski in evidence. [1922]

(Testimony of Hayward L. Bigler.)

I will offer this in evidence at this point.

Did you see this?

Mr. Holland: Yes. Go ahead.

(The letter referred to was thereupon marked Plaintiffs' Exhibit No. 156 in evidence.)

Q. (By Mr. Alioto): Incidentally, Mr. Milenski is living, isn't he? A. Yes.

Q. He is in Cortez, Colorado, today?

A. Right.

Mr. Alioto: November 19, 1941:

"Upon my return I find that Bigler has sauntered off to Denver to see a football game and will return on Saturday. As we pay a royalty to the owner of the claims, I have advised him of your offer, and will undoubtedly hear from him by the first of the week. The product that we have ready for shipment is molded and not ground. We would much prefer not grinding it as it will take additional equipment which we are not particularly anxious to buy. However, we might make some arrangement to grind it if absolutely necessary.

"We particularly like the sound of that \$1.05.

"With best regards,

"Dan Milenski."

And that is dated November 19, 1941. [1923]

Q. (By Mr. Alioto): Now then, shortly thereafter Mr. Leir, as you already testified, actually offered you \$1.20 f.o.b.? A. Shortly——

Q. Blanding? A. No, not shortly.

Q. Well, within three months?

(Testimony of Hayward L. Bigler.)

A. Well, what is the date on that?

Q. November 19, 1941.

A. I don't believe so.

Q. We will get the exact date in a moment, but let me ask you whether you did not tell the Continental Ore Company at the time that Garbutt was pressuring you to give your output to V.C.A.?

A. I had never told Mr. Garbutt that.

Q. Did Mr. Milenski tell him?

A. Well, the correspondence will have to stand on its own on that.

Mr. Alioto: Where is 131?

Q. (By the Court): Did you make the statement to Mr. Leir contained in the question?

A. What statement was that, your Honor?

Q. The question that you were being pressured by Mr. Garbutt—whatever his name was—to sell—

A. Frankly, I don't think I ever made such a statement to Mr. Leir, because I have never had any conversations with Mr. Leir other than the one we had at Grand Junction. Mr. Milenski talked to him on the phone, and I can't remember ever talking to Mr. Leir other than the time I met him in Grand Junction. I had plenty of conversations with Mr. Garbutt, because I conducted most of the negotiations with Mr. Garbutt.

Q. (By Mr. Alioto): Let me show you a document dated January 9, 1942, already in evidence, which reads as follows:

(Testimony of Hayward L. Bigler.)

"Apex Smelting Company.

"Gentlemen:

"At the advice and recommendation of the owner of our claims it will be necessary for us to dispose of our product here. We regret very much that we will be unable to deal with you.

"Very truly yours,

"Blanding Mines Company,

"By Dan Milenski."

I take it that Mr. Milenski was authorized to send that letter to the Apex Smelting Company, wasn't he?

A. I think he was, yes.

Q. Now, the owner of the claims referred to in this letter is the same Mr. Garbutt who sued you?

A. That is right. [1925]

Q. As previously stated? A. True.

Q. When was it that you first received any intimation that Mr. Garbutt and V.C.A. were dealing with each other?

A. I can't be sure of the date.

Q. Wasn't it right in the beginning of 1942, just about the same time? A. Probably.

Q. As a matter of fact, the formal contract between them was dated April 1st of 1942, was it not?

A. I don't know. I never did see the contract.

Q. Whatever happened to the files of the Blanding Mines?

A. Blanding Mines Company is a dissolved and liquidated corporation now. The last of the files that I knew of, they were left in Durango.

(Testimony of Hayward L. Bigler.)

Q. Who picked them up, do you know?

A. A lot of them were lost in Malen Wilson's office in Salt Lake City at the time of that trial. Most of the rest of them were subpoenaed in a Grand Jury investigation in Denver.

Q. Where are they now?

A. I haven't them.

Q. Did the government send them back to you?

A. They sent back a part of them.

Q. Where are they now? [1926]

A. In Durango, I presume.

Q. Where, in Durango?

A. Probably in Fred Brinker's office.

Q. And Fred Brinker works for what company?

A. The Vanadium Corporation of America.

Q. Yes. Do you have the contract between yourselves and Mr. Garbutt?

Mr. Holland: We have not been able to find it here. We will look for it this noon. I am sure we have a copy of it.

Q. (By Mr. Alioto): That lawsuit alleged that shortly after the V.C.A. made this deal with Garbutt, that you were aware of it and were informed about it. That is correct, isn't it?

A. That is right.

Q. And you knew shortly in the beginning of 1942 that V.C.A. had an interest in these claims with Garbutt?

A. That is right. But may I add one thing? That deal was made with our contract in full force and effect, and in good standing.

(Testimony of Hayward L. Bigler.)

Q. Yes.

A. V.C.A. recognized it, and so did Frank Garbutt.

Q. When was it that Garbutt first threatened to sue you for bad faith? Do you recall the date?

A. No, I don't. It was late—— [1927]

Q. In 1942, wasn't it, the same year?

A. It was in the fall of 1942, I believe.

Q. Let us see if we can't get a chronological picture of V.C.A.'s involvement with Garbutt, and then what happened to you.

How much of an interest did V.C.A. take from Garbutt, do you know?

A. I have never seen the contract, so I have no knowledge whatever of its contents.

Q. Under your contract you had to pay a certain royalty, or a certain interest, a percentage interest, to Garbutt, didn't you?

A. That is right.

Q. Now, that contract is one of the papers, I take it, that Mr. Brinker of the Vanadium Corporation of America has?

A. I presume it is still in the files, that we have a copy of it. We should have.

Q. Do you have that contract here in San Francisco?

Mr. Holland: I will look for that.

Mr. Alioto: Thank you very much.

Q. (By Mr. Alioto): Under that contract part of your net profits had to go to Garbutt?

A. That is right.

(Testimony of Hayward L. Bigler.)

Q. Now, there came a time when V.C.A. succeeded to [1928] Garbutt's interest in that contract, so then part of your profits had to go to V.C.A.?

A. No, because that contract was negotiated, and that was all stricken.

Q. What was stricken?

A. The portion of it that stated that V.C.A. was to participate in our profits, as I recall.

Q. About what time was that stricken? Was it after V.C.A. got into the picture?

A. It was a revision of the Garbutt contract.

Q. Made when?

A. After V.C.A. got the claims.

Q. So there was a period of time when V.C.A. had Garbutt's interest in your profits, isn't that right?

A. That is right.

Q. And that period of time began at least in April, 1942, didn't it?

A. No—well, I couldn't say, I couldn't say. The dates are not a part of my knowledge at all.

Q. Let me call your attention to the case of Garbutt against the Blanding Mines, and to the statement:

"According to the complaint on May 4, 1942, Garbutt assigned his right, title and interest in the contract to the Vanadium Corporation of America, and thereafter the Vanadium Corporation of America was [1929] entitled to all the benefits thereunder."

A. That is right.

Q. Does that refresh your recollection that that was the date on which it happened?

(Testimony of Hayward L. Bigler.)

The Court: Wouldn't that naturally follow, if they bought the claim? Wouldn't they step into the shoes of Garbutt?

Mr. Alioto: Yes, there is no question about that, if your Honor please. I am simply trying to fix the date. We did not hear anything about this on the direct examination, and I want to bring out V.C.A.'s involvement with Garbutt. I want to fix the date. I have no doubt about the law of assignment.

Q. (By the Court): What is the date?

A. This is May 4th, there, I believe.

Is that right?

Q. (By Mr. Alioto): Does that refresh your memory that that is the date on which it happened?

A. I wasn't there and I have never seen the document, Mr. Alioto.

Q. Weren't you informed about it, Mr. Bigler?

A. We were notified that the Garbutt claims had changed hands. [1930]

Mr. Holland: We will get that for you, Mr. Alioto.

Mr. Alioto: Thank you.

Q. (By Mr. Alioto): What was that you just said?

A. We were notified that the Garbutt property had changed hands and that V.C.A. was the purchaser.

Q. And thereafter you dealt with V.C.A.?

A. We were also notified that our contract was in full force and effect and in good standing.

(Testimony of Hayward L. Bigler.)

Q. Yes. But thereafter you dealt with V.C.A.?

A. That is right.

Q. (By the Court): And that is when you secured a modification of the contract?

A. That is right.

Q. (By Mr. Alioto): In other words, it was V.C.A. that modified the contract with you?

A. That is right.

Q. Do you know how much of Garbutt's interest V.C.A. had acquired?

A. I have no reason to know anything about the dealings between V.C.A. and Garbutt.

Q. I am just asking. V.C.A., when they took over Garbutt's interest, became your lessor, didn't they? [1931]

A. That is right.

Q. In other words, you were dealing with Garbutt in connection with what have been called the Cottonwood claims. That is correct, isn't it?

A. That is right.

Q. Approximately where on this map are these Cottonwood claims located?

A. They are about 15 miles southwest of Blanding on Cottonwood Wash.

Q. That is right about in the area I am indicating. Blanding is indicated to be in the Monticello Mining Area, and they were south of Blanding?

A. Yes, south and west.

Q. The mill was built around those claims, was it not?

A. It was built on the claims.

Q. Let us get a little history of that mill so

(Testimony of Hayward L. Bigler.)

we will lead up to this picture as to when V.C.A. entered the picture.

In 1937 that mill was built, was it not, as a 10-ton mill, built on these Cottonwood claims?

A. I don't know; I had nothing to do with it in 1937.

Q. Well, the mill, in any event—you came in as a creditor, isn't that a fact, Mr. Bigler?

A. In 1938.

Q. Yes. What kind of a creditor were you? What were you selling to the mill? [1932]

A. Petroleum products, fuel oils and lubricants.

Q. And the operator of the mill was a man named Howard Kimmerle, is that correct?

A. H. J. Kimmerle, Sr.

Q. H. J. Kimmerle, Sr. And you sold him petroleum products. And there came a time when he could not pay his bills, so you took over?

A. No, I didn't take him over.

Q. Or you and a group of creditors took over the mill?

A. No, I didn't take him over.

Q. What happened?

A. I was eventually paid by an assignment that was subsequently made by Mr. Kimmerle to me when he wanted to resume operations. It was a percentage of his proceeds. And my bill was paid in full.

Q. I thought you testified on direct examination that there came a time when you took over the operation of the mill for the benefit of the creditors.

(Testimony of Hayward L. Bigler.)

A. I was asked by the creditors to take over the operation and manage it for the benefit of the creditors and see if it was possible for them to recoup some of their losses.

Q. Fine. That is all I had reference to, Mr. Bigler; not anything else.

Do you remember approximately when it was that you took over? [1933]

A. In 1939, about September, as I recall.

The Court: We will recess at this time for ten minutes.

(Short recess.)

Q. (By Mr. Alioto): Mr. Bigler, I want to make something very plain in the record before going further, particularly in view of what I perceive to be a reaction on your part. I did not mean to imply that we believe the Garbutt charges of bad faith against you were true. We believe to the contrary, that Garbutt charges were false.

What I wanted to point out there was after an association with V.C.A., certain things happened in this case.

Now then, I think we were at the point where you were telling us you were a creditor of Mr. Kimmerle and there came a time when you took over the operation of the mill for the benefit of the creditors.

Do you recall, Mr. Bigler, approximately when that happened?

A. Approximately when we took over and began the operation for the benefit of the creditors?

(Testimony of Hayward L. Bigler.)

Q. Yes, sir.

A. It was late in September of '39 or early in October that we started the mill up on that phase of the operation.

Q. At that time who operated the mill besides yourself, Mr. Bigler?

A. Howard Kimmerle was in the mill all of the time, I was responsible for the operation, Mr. Usher was custodian of the funds—conservator.

Q. Now then, you tried to operate for the benefit of the [1934] creditors during that period of time, didn't you?

A. We did operate for the benefit of the creditors.

Q. All right. Do you recall that during that time or just prior to that time that the United States Vanadium Company tried to buy the mill from you?

A. I knew nothing of that whatever.

Q. Did Kimmerle ever tell you that the United States Vanadium Company—

A. No.

Q. —tried to buy the mill from him?

A. No.

Q. Now then, that operation for the creditors continued up until just before March of 1940, that is correct, is it not?

A. I believe, yes.

Q. Then in March of 1940, you and Mr. Milenski formed some kind of a financial organization for the purpose of taking over the mill, is that right?

A. No, we made a trip to Los Angeles in the

(Testimony of Hayward L. Bigler.)

early part of '40, in the spring, March or April, I believe, and discussed with Mr. Garbutt the possibilities of a contract directly with him.

Q. Who made the trip? A. Pardon?

Q. Who made the trip? [1935]

A. Mr. Milenski and myself.

Q. And you conferred with Mr. Garbutt?

A. I believe Howard Kimmerle, Jr. went with us on that same trip.

Q. When you made this trip to confer with Mr. Garbutt, you and Mr. Milenski had agreed, had you not, that the prospects for a profitable operation were good?

A. Well, Mr. Milenski was not at all familiar with any phase of our operation for the benefit of the creditors, and it was after that that I had discussed it at all with Mr. Milenski, and he at that time was acting as my attorney and I only took him along to California with me to discuss the matter with Mr. Garbutt.

Q. Well, did there come a time, though, when you made a deal with Mr. Garbutt, and that was about March of 1940?

A. Well, it was about March; it might have been April or the first part of May, even, it was the early part of 1940.

Q. In any event, you secured a lease from Mr. Garbutt, did you not? A. Right.

Q. Just give us the essence of that transaction with Garbutt, what was the deal?

A. It was a long-drawn out, complicated agree-

(Testimony of Hayward L. Bigler.)

ment and it provided for a three percent royalty based on the net selling price f.o.b. the mill at Cottonwood. [1936]

Q. Net selling price of the ore, is that correct?

A. The net selling price of fused vanadium oxide.

Q. All right. Three percent based on the selling price of fused vanadium oxide.

A. And that was based on 100 percent of the V_2O_5 contained in the ore, not on the recovery.

Q. Yes. And how long was this to last, how long a deal did you make?

A. It was one of those rather indefinite deals, that could just run on. I forgot—I don't even believe there was a termination date in it.

Q. At the time you made this deal, was the mill in condition to be operated immediately?

A. No.

Q. Did you undertake to do anything to that mill?

A. We installed several pieces of new equipment, the main one being the roaster.

Q. At the time you made this deal with Mr. Garbutt, you must have believed that it was a good business transaction?

A. Yes.

Q. Is that correct?

A. Yes.

Q. You felt that the market conditions were such at the time that it was well for you to make this kind of a deal?

A. Well, because of the fact that we made a profit for [1937] the creditors in the three months

(Testimony of Hayward L. Bigler.)

operation or four months operation, whatever it happened to be, all things being equal and the future looked fairly stable at that time we assumed that we would be able to operate for ourselves at a profit, also.

Q. During this period of time that you made a profit by which you were able to pay something to the creditors, to whom were you selling your product? A. Continental Ore.

Q. And your relations with Continental Ore were perfectly satisfactory, weren't they?

A. They paid for everything that we shipped to them.

Q. As a matter of fact, they had some kind of an arrangement where they put the money in the bank before the product was shipped?

A. We were allowed to draw 80 percent, I believe, or 75 percent, or something like that, of the estimated value in the shipment.

Q. And that was based upon the money having been put there in advance, isn't that correct?

A. I don't remember the circumstances on that. That's very vague in my mind and the records on that old operation were not preserved at all.

Q. In any event, you didn't have to wait for your money until the material arrived some place?

A. No.

Q. Do you recall what price Continental paid you at the time that you were operating for the creditors?

(Testimony of Hayward L. Bigler.)

A. It was approximately a dollar a pound plus or minus—I could not be too sure of it.

Q. It was the top of the market, at any event, wasn't it, Mr. Bigler?

A. Well, it was apparently the best price that we could get at that time.

Q. Did you try to get a better price from the United States Vanadium Company?

A. I don't know that we even contacted the United States Vanadium Company.

Q. Did you try to get a better price from the Vanadium Corporation of America?

A. I don't think we even contacted—in fact, if you will realize that at that time I was only directed to manage that operation as far as the mining and milling and the shipping and we pursued the same policy that had been followed by H. J. Kimmerle, Sr. Assuming that probably if we continued to operate that mill for the benefit of the creditors sufficiently long to recover for them all of the debts, that the mill would probably be turned back to Mr. Kimmerle.

Q. Why wasn't it turned back to Mr. Kimmerle?

A. It broke down completely, and there were approximately [1939] 70 to 75 percent of sufficient funds to repay the creditors in full, and the creditors' attorney asked us to turn that over to him and not spend any of it in repairing the mill.

Q. Well, then, you paid off the creditors three-quarters of their claims?

(Testimony of Hayward L. Bigler.)

A. I didn't pay them at all. I turned it over to their attorney and he distributed the funds.

Q. I mean, you turned over to somebody approximately three-quarters of the claims, is that right?

A. We turned over sufficient funds to take care of approximately three-quarters of the claims.

Q. Now then, is it not a fact that you also got as high as \$1.30 for some of the oxide you sold to Continental at that time?

A. I don't know. As I told you, I didn't recall. It is possible, because that was during the period prior to the time that there was an embargo on vanadium oxide and it was probably sold on a foreign market.

It seems to me that correspondence I have had or read after that time with Continental Ore referred to a foreign market.

Q. Now then, in any event, when you——. Incidentally, who was a man named Usher? There is a statement by Mr. Milenski that the vanadium mines at Blanding formerly operated by H. J. Kimmerle, he says in Plaintiffs' Exhibit 131, formerly [1940] operated by H. J. Kimmerle and later by Bigler and Usher—who was Usher?

A. He was the banker in Cortez who handled the funds. Designated to handle the finances on this and receive the funds and deliver them at the discretion of the attorney for the creditors.

Q. In other words, he helped you during that creditor period? A. That's right.

(Testimony of Hayward L. Bigler.)

Q. Now then, however, beginning in 1940, when you and Mr. Milenski took over, you were operating for your own account at that point, were you not?

A. Yes. That is right.

Q. Who was in that transaction, just you and Milenski? A. No, Art Kimmerle, Jr.

Q. And how were the shares split at that time, Mr. Bigler?

A. I don't recall. We eventually formed a corporation.

Q. In any event, you did secure a lease from Garbutt. Now, what was done on the mines themselves—the Garbutt claims—

Now, what about the mill itself, did you make some kind of an arrangement to operate that mill?

A. The lease on the property included all facilities thereon.

Q. Now, then, from the period you got into production—about July of 1940, did you not?

A. Approximately then.

Q. At the time you got into production, you got in touch with Mr. Leir, Continental Ore Company?

A. That's correct. I believe Mr. Milenski probably handled the correspondence in connection with that.

Q. And between 1940 and January of 1941 you shipped your materials to the Continental Ore Company, did you not? A. Correct.

Q. Now, then, in January of 1941, do you recall Mr. Leir telling you that he had heard that the

(Testimony of Hayward L. Bigler.)

Vanadium Corporation of America had secured an option on those claims?

A. No, I don't recall that. What is the date that you mentioned there?

Q. January '41, or, rather '42—I am sorry.

A. No, I don't recall that. I think it was about that time that the Vanadium Corporation of America approached us about buying ore and we negotiated a contract to sell them the finished product. And they even discussed buying the claims. We told them that we didn't own the claims.

Q. Now, can you fix the approximate time when that happened, Mr. Bigler?

A. I think that it—as I said, it was approximately that time, maybe late in the fall of 1941, that some representative of the Vanadium Company called on us asking if we would be [1942] interested in selling the claims.

Q. Who was that representative? Was it a Mr. Kett? Or a Mr. Viles?

A. I believe it was Mr. Kett, and at a subsequent — subsequently Mr. Kett and another — I believe he was Mr. Bransome — and Mr. Kett came to us at one time in Cortez, and I told him that —

Q. Excuse me, before you tell us what you told them. Where was the meeting held in Cortez, do you recall?

A. I don't know whether it was held in my office or Mr. Milenski's office, one of the two.

Q. Who was present at that meeting?

A. Mr. Milenski and myself.

(Testimony of Hayward L. Bigler.)

Q. Mr. Kett and Mr. Bransome?

A. I'm not sure whether Mr. Bransome and Mr. Kett were both present at that time or not.

Q. But there were occasions when you saw both Kett—when you saw Mr. Kett and Mr. Bransome, you saw both of them at some time, is that it?

A. Yes. And I don't recall whether it was together or separate.

Q. All right. Now, whether together or separately, what was the substance of the conversation between you and Mr. Kett and Mr. Bransome?

A. We were approached to find out if we would be interested in selling the claims.

Q. And at that time were you selling the vanadium oxide to the Continental Ore Company?

A. We were not in production. That was in the fall of '41. We were in experimental operation and didn't have production steady at that time, we had nothing to sell yet.

Q. In the fall of '41? A. Right.

The Court: What did you say in that conversation?

A. I told either one or both of them, whichever it was, that we did not own the claims, that we only had a lease on them, and, as I recall it, they asked if it would be all right if they talked to the owner of the claims. And I said, "We have got no objection to your talking to the owner of the claims, as long as you recognize our leases being in full force and effect." [1944]

Q. (By Mr. Alioto): Just before this conversa-

(Testimony of Hayward L. Bigler.)

tion you folks had remodeled your mill, had you not?

A. We were in the process of completing the remodeling and testing it at that time, as I recall.

Q. You figured, then, you were producing about 5,000 pounds per week?

A. We hoped to. Whenever we figured, we oftentimes figured wrong.

Q. That happens. That happens all the time, Mr. Bigler.

I would like to read, so we can get a continuity to this testimony, the letter of October 31, 1941, which is part of Plaintiffs' Exhibit 131. It is a letter from Mr. Dan Milenski to the Apex Smelting Company. It states as follows:

"In response to a request of Mr. Henry J. Leir we wired you as follows: We are in no hurry to start shipment. We are producing approximately 25,000 pounds per week. Production undoubtedly will double in 1942. Letter follows."

Mr. Holland: Is that 2,500, Mr. Alioto?

Mr. Alioto: 2,500. Did I say 25,000?

Mr. Holland: Yes.

Mr. Alioto: I am sorry (reading): "We are producing approximately 2,500 pounds per week. Production undoubtedly will double in 1942. Letter follows. [1945] Our mill has been completely rebuilt and we have a centralized power plant. The bugs have been removed much better than expected. As yet we are not trying to crowd the mill, or even put it up to the production that it will take. We

(Testimony of Hayward L. Bigler.)

have gathered considerable data and are expecting we will soon be producing over 5,000 pounds per week. Our product is over 85 percent pure, i.e., V_2O_5 . Your quotation of \$1.05 Chicago is below other offers which we have received, and we are not disposed to sell for that price with better offers available. We suggest that if you desire, that you submit a new offer. We might be agreeable if price is satisfactory to contract for shipments at stated intervals of certain size. The writer plans on being in Chicago somewhere around November 10th and will endeavor to call on you and discuss the situation."

Q. (By Mr. Alioto): I take it you conferred with Mr. Milenski at or about the time that letter was sent, Mr. Bigler? A. I presume so.

Q. Do you recall who had offered you a higher price than \$1.02 at the time?

A. A higher price than what?

Q. Than \$1.02. [1946]

A. What is the date of this?

Q. This is October 31, 1941.

A. Well, I don't know that we had a firm offer at that time yet, but we were in the process of negotiating with the U. S. Vanadium Corporation, and the Vanadium Corporation of America, and had other correspondence out, and the Vanadium Corporation of America had implied, as I recall it, that our product was up to certain specifications, that they might pay us as high as \$1.10 a pound.

(Testimony of Hayward L. Bigler.)

Q. You say they implied it. You mean somebody in their organization?

A. Talked to first, inferring that they would have to get the approval from higher up as to whether or not they would.

Q. Did Mr. Kett or Mr. Bransome tell you that at the time he was negotiating?

A. I don't believe they did. I don't think we ever discussed anything about the price on fused vanadium oxide.

Q. By reference to that letter of October 31st that I have just read, can you fix the approximate time that you had your discussions with Mr. Kett and Mr. Bransome, that reports a certain progress in connection with the remodeling of the mill, and I thought that might help you fix the time when you talked to Mr. Kett and Mr. Bransome?

A. No, I couldn't fix it very accurately. The first negotiations that we had with the Vanadium Corporation of America [1947] at all in connection with the sale of products were in the summer of 1941, when we were tearing out the old roaster and had a batch of clean-up, and there was quite a bit of impure vanadium oxide out of the old roaster, and we asked them for an offer on it.

Q. Who did you ask, do you remember?

A. Well, Mr. Harrison was in charge, and he probably contacted someone in their Naturita office, as I recall it, and they asked for samples.

Q. Yes.

(Testimony of Hayward L. Bigler.)

A. And we sold that product which, as I recall it, ran approximately close to 60 percent.

Q. Yes.

A. In fused vanadium oxide, at a fairly good price—not anywhere near the price of the 85 percent pure stuff, but we got a pretty good price for it and cleaned it up. That was the first negotiations we had. These other negotiations came subsequent to that, when we were approached by them on the purchase of claims, and we contacted them later to sell our 85 percent pure oxide, and at the same time began negotiations in contacting them in the fall of 1941. And I can't tell you exactly when, because a lot of it was done by Mr. Harrison, and done by telephone or personal conversations.

Q. Yes, we understand that. In any event, it was in the fall of 1941 that there were conversations both about buying [1948] your claims and about buying your oxide?

A. We didn't own any claims.

Q. I understand that. Let me rephrase it.

You had conversations with Bransome and Kett about V.C.A. buying the Garbutt claims, and conversations about buying oxide with these other V.C.A. folks took place at or about the same time?

A. I believe so. It was within the same period.

Q. And they offered you at that time how much, do you recall?

A. We began to negotiate on the basis of \$1.10 a pound, because we found out that fused acid of that type had a market value of approximately

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(Testimony of Hayward L. Bigler.)

\$1.10 a pound, and that if we sold for less than that we were not getting its full value.

Q. In any event, in that period of time, when you opened up in October, you still sold to the Continental Ore, didn't you?

A. I don't recall whether we made any shipments in 1941 to the Continental Ore Company or not.

Q. Let us see if we can't be helpful on that.

Do you recall Mr. Milenski said he was going to Chicago, and the next letter is November 14, 1941, in which Mr. Lippa writes to the Continental Ore Company:

"In reply to your letter of November 13th regarding Mr. Milenski, please be advised that we have [1949] arranged to pay them \$1.05 Chicago."

And then you will recall Mr. Milenski's letter that I read a little earlier about that \$1.05—

A. But it doesn't say anything about any shipment being made, does it?

Q. No, this does not.

A. So I don't know whether there was any shipment made to them at all there.

Q. Do you recall on January 6, 1942, Mr. Leir wrote this letter—and this letter is in evidence—and I think this is continuing the story here:

"Attention: Mr. H. L. Bigler"—
from Mr. Leir:

"We understand that your Blanding Mill and your mining claims (or perhaps only one or the other) are at present under option to the Vana-

(Testimony of Hayward L. Bigler.)

dium Corporation of America. We should very much appreciate your informing us frankly as to whether this information is correct. We hope you will not hesitate to tell us your position in that respect, in view of our long and pleasant relations, and the complete cooperation we have always given you.

"In any case, we wish to say that it is, of course, the tendency of the U. S. Vanadium Corporation and the Vanadium Corporation of America [1950] to firmly establish their monopoly by getting hold of all sources of vanadic acid, so as to impede the operations of their sole competitor, the Apex Smelting Company.

"However, we do not see any advantage to you in lending your facilities to this project. If you will sell out to the Vanadium Corporation at this time, you will only have to pay a lot of taxes, instead of holding onto a continuous business which, in cooperation with us, will be profitable for you for years to come.

"During the war we can pay you a satisfactory price for the acid, and once the war is over we can again obtain for you the higher prices which govern the foreign markets. This would not be the case if you sold out now, or tied up your production with the Vanadium Corporation, because it would be they who would profit by these interesting foreign markets.

"This situation may arise much more quickly than most people think. We do not believe the war

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(Testimony of Hayward L. Bigler.)

will last for years and years, as is often anticipated. We think that conditions in Europe, and especially in Germany, are such that the end may come within this year." [1951]

And this is January of 1942 (continuing reading):

"For all these reasons we think it is much more to your advantage to stay independent, and we should like to hear from you in this respect."

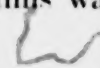
I take it when you received this letter, Mr. Bigler, you and Mr. Milenski discussed the type of answer that you would give to Continental?

A. We were not approached by the Vanadium Corporation to sell anything that we had. They were approaching us about buying the claims, and whether or not they pursued that at that particular time or later, I don't know. They might have gone to Mr. Garbutt, then, or they might have waited two or three months, I don't know.

Q. Do you remember discussing the answer to this letter to Mr. Leir? The answer is dated January 9, 1942, which I think I have already read:

"At the advice and recommendation of the owner of our claims, it will be necessary for us to dispose of our product here. We regret very much that we will be unable to deal with you."

Now, the owner of the claims was Garbutt?

A. That is right. 

Q. And to whom did you dispose of the product here in January, 1942?

(Testimony of Hayward L. Bigler.)

A. We disposed of the product to the Vanadium Corporation of America. [1952]

Q. At what price?

A. At \$1.10 a pound f.o.b the mill in bricks.

Q. You recall Mr. Lippa wrote you back and said:

"We have your letter of January 9th, and we regret exceedingly to note you are compelled to dispose of your material in your district, as we enjoyed doing business with you, and we were looking forward to receiving increasing amounts from you.

"However, should the situation change in the future, we will appreciate it if you will again get in touch with us."

That is Mr. Lippa to Mr. Dan Milenski.

On January 14, 1942, Mr. Milenski writes to the Continental Ore Company:

"Dear Mr. Leir:

"We do not know exactly what our plans will be for the future operations of the Blanding mill as in making these plans we must naturally consider the views of Mr. Garbutt, the owner of the claims, for the reason that through Mr. Garbutt we secure valuable information which is working to our advantage. Our marketing is being handled principally through Mr. Garbutt and we are getting a satisfactory price which is much better than the price offered by Apex. [1953]

"Possibly in the near future we might have reached definite plans for future operations, and if so we will advise you."

(Testimony of Hayward L. Bigler.)

Now, is the statement that your marketing was being done through Mr. Garbutt in January, 1942, a true statement?

A. It was not being done through Mr. Garbutt. We only conferred at times.

Q. Excuse me. May I get the question in this record?

Is the statement made by Mr. Milenski to Mr. Leir on January 14, 1942, that:

"* * * we must naturally consider the views of Mr. Garbutt, the owner of the claims, for the reason that through Mr. Garbutt we secure valuable information which is working to our advantage. Our marketing is being handled principally through Mr. Garbutt * * *"

Was that statement correct, in January, 1942?

A. No; no, it wasn't being handled principally through Mr. Garbutt. We only conferred with Mr. Garbutt from time to time.

Q. Why do you think Mr. Milenski told Mr. Leir that?

A. I didn't write the letter. He wrote it that way. And I think it is a little ambiguous.

Q. Didn't you confer with Mr. Milenski at the time he wrote this letter? [1954] A. No.

Q. In any event, it was perfectly clear at the time the letter was written you were selling to the Vanadium Corporation of America?

A. That is right.

Q. You must have been aware in January of 1942 that the Vanadium Corporation of America

(Testimony of Hayward L. Bigler.)

was in dealings with Mr. Garbutt about acquiring an interest in his claims, weren't you?

A. Well, we might have suspected that they were because of the fact they had approached us to buy the claims.

Q. Mr. Bigler, in just old plain American language, didn't Garbutt tell you you had to sell to V.C.A.?

A. He did not.

The Court: You are putting your answer in the same old kind of language, then.

Q. (By Mr. Alioto): Let us look at some, perhaps, un-American language by Mr. Milenski on January 9, 1942 (reading):

"At the advice and recommendation of the owner of our claims, it will be necessary for us to dispose of our product here."

A. This says "advice," doesn't it, "and recommendation"?

Q. Yes.

A. Not orders. [1955]

Q. That "it will be necessary for us to dispose of our product here."

Was it necessary, in January of 1942, to do that?

A. No, it wasn't necessary.

Q. But you did it?

A. That is right.

Q. Did Mr. Garbutt tell you why he wanted you to sell your output to Vanadium Corporation of America?

A. I don't think Mr. Garbutt ever told me that he wanted me to sell. Knowing Mr. Garbutt as I know him, there was one thing that he was interested in, and that was a dollar, and he would tell

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(Testimony of Hayward L. Bigler.)

me to sell that product wherever I could get the best possible net return to me for it.

Q. This language about advice and recommendations, I take it, was not made to you. Was it made to Mr. Milenski?

A. If it was, I don't know of it.

Q. Did you discuss the marketing of vanadium oxide with Mr. Garbutt, or was that Mr. Milenski's business?

A. We discussed such things, and I do not believe that just because that is worded in such a manner that it might be interpreted to be ambiguous—or interpreted ambiguously—that we ever received any orders directly from Mr. Garbutt to sell our product to any one individual or company.

Q. Incidentally, Mr. Milenski, the writer of the letter, is an attorney-at-law, is he not? [1956]

A. That is right.

Q. And he is still practicing in Cortez?

A. That is right.

Q. He is a pretty good attorney, as a matter of fact, isn't he? A. That is right.

The Court: You can't always tell what your lawyer puts in a letter.

The Witness: No, I can't.

Q. (By Mr. Alioto): Of course, in this instance he was not just your lawyer; he was your partner, wasn't he?

A. He was the secretary of a corporation.

Q. He had a financial interest in the deal, didn't he?

(Testimony of Hayward L. Bigler.)

A. Sure he did. But that doesn't mean he can't write a letter ambiguously.

Q. How much of a financial interest did he have, Mr. Bigler, do you recall?

A. No, I do not at that time.

Q. Now then, is it not a fact that in March of 1942 you folks made a deal with V.C.A. under the terms of which two-thirds, or you acquiesced in the deal between V.C.A. and Garbutt under which two-thirds of the Cottonwood claims were released to the immediate possession of V.C.A.—that is, the Vanadium Corporation of America? [1957]

The Witness: What was your question, again, now, please?

Q. (By Mr. Alioto): Let me put it directly: Do you recall in March of 1942 whether or not two-thirds of the Cottonwood claims in which you mined were released to the immediate possession of the Vanadium Corporation of America?

A. They were not.

Q. Do you recall whether or not the Vanadium Corporation of America at that time succeeded to Garbutt's rights in the royalty of one-third of the Blanding profits?

A. On what date?

Q. In March of 1942. And if the date is bothering you, let me say in or around March of 1942.

A. I didn't even know at that time that the Vanadium Corporation of America was actively negotiating with Mr. Garbutt. The contract was consummated and dated May 4th.

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(Testimony of Hayward L. Bigler.)

Q. You suspected it, to use your language, didn't you? A. Why should I?

Q. I don't know.

A. How could they divide up claims that we had the lease on 44 of them without our consent, with our contract in full force and effect?

Q. Let me put it: In May of 1942 you came to the realization, did you not, that Garbutt had transferred his rights [1958] under the lease with you to the Vanadium Corporation of America?

A. That is right.

Q. For one-third of the royalty, was it?

A. For a three percent royalty, and the other provisions that I can't recall the exact wording on, and I wouldn't attempt to try to quote them.

Q. Counsel will be good enough to look for those contracts for us during the noon hour.

Now, after V.C.A. came into possession, and you were aware of the V.C.A. interest in these claims, did you then negotiate another deal with V.C.A.?

A. Yes. [1959]

Q. Was that the subject of a contract?

A. That was a contract.

Q. A written contract?

A. That was negotiated in the latter part of May or first of June.

Q. All right. Now tell us what that deal was, give us just the basic essentials of it.

A. Well, there were a lot of ambiguities in the contract that we had with Garbutt.

(Testimony of Hayward L. Bigler.)

Q. Mr. Milenski didn't draw up this contract, did he? A. Garbutt did.

Q. Okay. A. And—

The Court: Let him answer.

Mr. Alioto: I'm sorry.

A. There were a lot of disputable points in it and we were very unhappy about it. In fact, there had been times when I had tried to get some clarifications in it from Mr. Garbutt and he modified everything by letters stating that we would have no trouble on it as long as we continued our operation as we were and just let the matter ride.

So, when the Vanadium Corporation of America notified us that they were buying, we began negotiations with them. In fact, in the conversation—in one of the earlier conversations we had tentatively stated that there were some of those [1960] claims we considered of no particular value, and we were only operating on a part of them. And they asked us if we would release to them that part of the claims that we had done no exploratory work on and were doing no mining work on.

Q. (By Mr. Alioto): And was that about two-thirds of the claims?

A. Well, it was the worthless part of them, as far as we were concerned.

Q. Was it approximately two-thirds, whether worthless or not, so that my "two-thirds" figure of a while ago didn't come out of the air?

A. Well, it might have been as far as total area is concerned.

(Testimony of Hayward L. Bigler.)

Q. Yes. Okay. And then what else happened, what was the deal that you made?

A. We revised the contract very much to our advantage on the balance of it.

Q. And you gave Vanadium Corporation of America immediate possession of an area at least two-thirds of the claims?

A. Not immediate possession. They agreed to do a lot of core drilling for us on the part that we were reserving to determine whether or not we were satisfied that there was sufficient ore body within that area for us to continue to run our mill on.

Q. Yes? [1961]

A. That was consummated. They did the drilling and we were satisfied with the ore body because the results of the drilling were very favorable.

Q. And then what happened to that two-thirds area?

A. We released it to V.C.A. because we didn't care to operate on it. It was high lime ore and low grade ore that was in there, as far as we were concerned, of no value to us at all.

Q. Okay.

The Court: Well, they owned the property subject to your lease on it?

A. Yes, but we had the lease on all of it, approximately forty claims, or fractions of claims.

The Court: Now, V.C.A. then bought those claims—they bought them from Mr. Garbutt?

A. Yes, sir.

(Testimony of Hayward L. Bigler.)

The Court: So you had a lease——

A. From V.C.A.

The Court: ——on certain claims that you thought were worthless? A. Yes.

The Court: And those are the ones that you released? A. That's right.

Q. (By Mr. Alioto): And later on you say that the [1962] core drilling established the fact that those claims had——

A. I said the core drilling established the fact that the area that we reserved contained sufficient ore to justify the continued milling operation as we hoped to have it continue.

Q. Now then, you wanted to continue with the operation then? A. We did.

Q. And did you? A. Yes.

Q. For how long?

A. The lease ran for 15 years, it ran out last year, and it was never canceled.

Q. Well, a few weeks after you made the deal with V.C.A., the mill burned down, didn't it?

A. That's right.

Q. So that shut you down.

Mr. Holland: You are not blaming us for that?

Mr. Alioto: I don't blame anybody for anything. I am just developing whatever the facts are.

Q. The mill burned down? A. Yes, sir.

Q. And then what happened?

A. We were approached by the Defense-Plant Corporation to rebuild the mill and we told them that we didn't have the necessary finances to re-

(Testimony of Hayward L. Bigler.)

build it, and they said "We need the [1963] vanadium production badly * * *"

The Court: Now, that is the government agency?

A. Yes, sir.

Q. (By Mr. Alioto): Yes?

A. " * * * and we will rebuild it for you if we can get everything worked out and are satisfied that the ore reserves are sufficient."

Q. Yes?

A. And so subsequently that mill was built by the Defense Plant Corporation.

Q. Where?

A. On the Cottonwood claims there.

Q. Well, as a matter of fact, isn't this what happened, that you then drew up plans for a new and a larger mill of a 25-ton capacity, is that right?

A. Well, I don't remember the capacity that we proposed to rebuild.

Q. In any event, you drew up plans for a new and larger mill?

A. Mr. Brinker was the construction and metallurgical engineer with us and he prepared all those plans and specifications.

Q. He is the man who is now working for V.C.A.

A. That's right.

Q. And, of course, he is still living? [1964]

A. He started working for V.C.A. just a short time back, relatively speaking, a few years ago.

Q. Yes. All right. Now, anyway, new plans were drawn up. Under the new plans you didn't propose to put the mill in the same place where

(Testimony of Hayward L. Bigler.)

the mill had burned down, did you? You proposed to put it between Cottonwood and a new group of claims on which you had secured an option, isn't that correct?

A. I believe we contemplated that at one time.

Q. What did V.C.A. tell you when they saw those plans?

A. Well, at first they agreed to do it and then they read their contract, and it stated that any mill had to be built on those claims, and they insisted we build the mill on the claims if we were to preserve our contract.

Q. In other words, they told you that they would cancel the lease on you if you built the mill where you wanted to build it?

A. Well, according to the terms of the contract, we would be automatically canceled if we built the mill any place else.

Q. That is what they told you they would do?

A. Yes.

Q. Who told you that?

A. Nobody told me that. It was told to Mr. Brinker.

Q. Who told Mr. Brinker that?

A. Oh, one of the Vanadium Corporation officials. I don't [1965] remember.

Q. Which one? Was it Kett?

A. I don't know.

Q. Mr. Kett, I mean. A. I don't know.

Q. You have no idea at all at this time who it was that said that?

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(Testimony of Hayward L. Bigler.)

The Court: He has answered your question, he didn't know.

A. He didn't tell me.

Mr. Alioto: All right.

Q. In any event, you yielded to this and you built a 15-ton mill at Cottonwood? A. Right.

Q. With the help of the Defense Plant Corporation. That's the fact, is it not?

Now, the fire occurred some time in April of 1942, did it not? A. June.

Q. June of '42. And your new mill wasn't completed until March '43, isn't that right?

A. That's right.

Q. Now then, you were visited by a fellow named Mr. Edwards at that point, weren't you?

A. I don't remember. [1966]

Q. Well, at this point now the Metals Reserve program was in effect, was it not?

A. I couldn't say what date that the Metals Reserve program went into effect, I don't recall.

Q. Well, who was running the mill when you opened up, your new mill, in March '43?

A. Brinker was the metallurgical engineer directly in charge of it.

Q. What were you doing in connection with this operation? A. Looking after the mining.

Q. Did you have any other occupation at this time, incidentally, Mr. Bigler? A. Yes.

Q. Or did you devote your full time to this operation?

(Testimony of Hayward L. Bigler.)

A. I devoted probably 20 per cent of my time to this.

Q. To this operation? A. Yes.

Q. And what was your other business at this time?

A. I had my refined petroleum products distributing business.

Q. Distributing whose products?

A. Continental Oil Company.

Q. Continental Oil Company? A. Yes.

Mr. Holland: No relation? [1967]

Mr. Alioto: No relation.

Q. Do you know whether at the time you opened your new mill a man Edwards called at the mill and advised you to stop producing vanadium acid? And instead ship your ore to V.C.A.'s Monticello plant?

A. I am reasonably sure that he didn't.

Q. Did not. Okay. In any event—

A. If he did, I didn't hear about it.

Q. In any event, after you built the mill, you didn't operate it, did you? A. Yes.

Q. For how long?

A. For approximately two months.

Q. And then what did you do?

A. Because of the fact that we were losing money on it, we shut it down.

Q. In other words, in March of 1943 you opened a mill which had been built with Defense Plant funds. Tell me, was it a good mill?

A. And also designed by Defense Plant engineers?

(Testimony of Hayward L. Bigler.)

Q. Yes.

A. Who installed batch roasts, which did not work satisfactorily at all.

Q. So after two months you closed the mill down?

A. There was nothing in the contract that said we had to [1968] run it and lose money.

Q. How much money did the government spend building it? A. I don't know.

Q. Oh, about how much?

A. You'd have to dig into the figures on that. I have no way of recalling or nothing at all.

Q. Well, was it over a hundred thousand dollars?

A. Not that I know of.

Q. Where are—— A. I couldn't say.

Q. Where are these figures, are they also in the hands of V.C.A.?

A. You would have to get those from the Defense Plant Corporation, I think.

Mr. Alioto: May we have them?

Mr. Holland: We haven't got them.

Q. (By Mr. Alioto): In other words, the only one that knows how much it cost to build that plant would be somebody in the Defense Plant Corporation in Washington right now?

A. It is possible that Mr. Brinker might be able to testify to that because he was the engineer—our engineer—that collaborated with the Defense Plant Corporation engineer in the designing and construction of that mill.

The Court: Well, your answer is you don't know?

(Testimony of Hayward L. Bigler.)

A. That's right. [1969]

Q. (By Mr. Alioto): Now, this was a 15-ton mill?

A. Approximately.

Q. Was it not?

A. Approximately; designed to process 15 tons of ore.

Q. To whom did you sell the ore then when you closed down the mill?

A. The ore?

Q. Yes.

A. We sold the ore to the Metals Reserve.

Q. And that ore was sent to Monticello, to the V.C.A. plant at Monticello?

A. It was sent to wherever the Metals Reserve administration instructed us to stockpile it.

Q. I appreciate that.

The Court: That was a government agency?

A. That's right.

Q. (By Mr. Alioto): I appreciate that, but can't you give us some help as to where the ore went, where your ore went?

A. Big part of it was unloaded first at Monticello and a lot of it that was then transferred to Durango. And where it ultimately was processed, I don't know. It made no difference.

Q. Now then, there came a time in the latter part of 1943 when you got together with a man named Mr. Sifton in connection [1970] with the possibility of acquiring the Durango mill that had been built with government funds and operated by U.S.V. up to that point, do you recall that?

A. No, in 1943 that mill was being operated by

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(Testimony of Hayward L. Bigler.)

U.S.V. and was operated until March the 1st, 1944, or shortly after.

Q. Yes, but you are aware of the fact that at the end of 1943 there were conversations about stopping the production, the excess production of vanadium, and of canceling the Nisley-Wilson contract, and of canceling other contracts; you knew that?

A. No, I am not—the only information that I have was that we were—I recall that we were notified, I believe it was some date in January, that the Metals Reserve ore-buying program would cease on March the 1st.

Q. Now, whenever it was, at the time you received that information, did you join with other people in connection with forming a plan to take over the Durango mill? A. No.

Q. Was there a time when you got in touch with a Mr. Sitton?

A. I knew Mr. Sitton. I sold him petroleum products for his farming operations and saw him probably every few days. And I don't know what you are referring to.

Q. Now, you testified, I think on direct examination, that you had some kind of a meeting at the hotel in Grand Junction at which Mr. Leir was present? [1971]

A. That was in March of '44.

Q. March of '44. All right. Was Mr. Sitton there? A. I believe he was.

(Testimony of Hayward L. Bigler.)

Q. And who else was there? Give us all the people you remember being there.

A. Well, frankly, I don't remember very many of them. I think Mr. Balsley was there.

Q. Who was he?

A. He was a resident of Moab and an owner of quite a few mining claims.

And a man by the name of Mr. Bennett.

And a man by the name of Mr. Wright.

There were—

Q. Who was Wright?

A. There were a few other independent claim owners that were strangers to me.

Q. And you had been invited to that meeting, had you not?

A. Well, we went there primarily to discuss with Mr. Leir—or we thought we were there to discuss with Mr. Leir the refinancing program and enlargement of our mill. I knew nothing of any—of the subject matter that came up at the meeting prior to the time that we arrived at Grand Junction.

Q. Mr. Bigler, before you got to Grand Junction you say that you had no idea at all of the purpose of this meeting, that it was to organize a group of independent ore producers [1972] for the purpose of insuring a steady, dependable source of ore and vanadic acid?

A. I stated that I went there primarily to discuss with Mr. Leir and some of his associates that we thought were going to accompany him, the fi-

(Testimony of Hayward L. Bigler.)

nancing and the enlargement of the mill that we hoped to reopen.

Q. Now, regardless of your primary purpose, Mr. Bigler, my question at the moment is——

The Court: Well, did you know of this other plan, other purpose?

A. I think by the grapevine I heard there was something in the wind for that, but I don't know that I had—I don't—I am sure I had no actual information about it at all. In fact, it was a surprise to me that the meeting was specifically for that purpose alone.

Q. (By Mr. Alioto): Why? Did somebody take you to task for attending that meeting?

A. No, nobody took me to task for attending that meeting.

Q. All right. At this meeting there were a group of producers, those that you have mentioned, among others. Now, at the meeting was there a discussion which you heard that related to the formation of an association of independent miners of ore so that there would always be a steady dependable source of ore supply for vanadic acid, do you remember any discussion about that? [1973]

A. There was a discussion about that and a discussion about the building of a mill, but who was going to put up the finances never showed up.

Q. I think a while ago you said—Mr. Holland handed you an exhibit of his called Defendants' V-2-L, and I think you said at the time that you had some handwriting on that letter.

(Testimony of Hayward L. Bigler.)

A. Yes, sir.

Q. Do you identify that handwriting as yours (handing witness)?

A. Yes, sir.

Q. Would you be good enough to read the last two items of that handwriting?

A. This, by the way, is dated March the 24th, probably two or three weeks after that meeting.

Q. Well, now, then do you fix the meeting—

The Court: March 24, when?

A. In 1944.

The Court: All right. Now let him answer the question.

A. And it was after the receipt of the proposed contract that Mr. Holland read.

My notes on the bottom of this wire, if it is a wire, that was apparently sent by Mr. Milenski, my notes on the bottom of it are referring to the objectionable features in the contract, [1974] and it reads:

"Price and/or ferro grade," which apparently means that there was no specific price or grade referred to in the contract.

"Drums returned at his expense or ship in sets. Furnish one-fourth, possibly finer."

Now, he apparently asked for ground product again.

"Sodium average in shipments to V.C.A." and that referred that we were only agreeable to a sodium penalty providing that the allowable sodium was based on the amount of sodium that had been

(Testimony of Hayward L. Bigler.)

in the shipments that we had made for the last year and a half or so.

“Uranium”—have got in there “future”—that means that the uranium picture was very uncertain and there should be some definite provision or agreement on that.

And then at the bottom it says, “Association articles.”

Q. What does that mean?

A. That was after the meeting and the articles of the association were being formed and we hadn't even seen them yet.

Q. All right. Now then, the “association articles” refer to something that was discussed at the meeting? A. That's right.

Q. Is that correct, Mr. Bigler? [1975]

A. Yes.

Q. Tell us everything you remember being discussed at that meeting about an association or independent ore producers.

A. Well, frankly, I didn't listen to too much of it because I was not particularly interested, because it was apparent that it was an association of ore producers and not for the benefit of a milling operation because there was no provision in the agreement to start a mill.

Q. Didn't Mr. Leir tell you at the time of that meeting in Grand Junction that if any independent ore producers or anybody else was able to demonstrate that they could produce 50,000 pounds of vanadium oxide per month without interruption,

(Testimony of Hayward L. Bigler.)

that he would build a ferro-vanadium mill in Colorado? A. I don't recall that he did.

Q. Didn't he give you that in writing, as a matter of fact?

A. No, he didn't give me that in writing. You can read the contract that he submitted to us as to what he proposed and there were any number of objectionable features in it as far as we were concerned. *

The Court: Well, was Mr. Leir active in the meeting that you had?

A. He took charge of it.

Q. (By Mr. Alioto): He presided at that meeting, didn't he? [1976] A. That's right.

Mr. Alioto: Where is the contract that Mr. Holland put in?

Paragraph VIII of the contract submitted to the witness and Mr. Milenski and is part of Mr. Holland's Exhibit 2-K—the V-2-K—reads as follows:

"In the event that Blanding shall produce over a period of blank months a quantity of 50,000 pounds vanadium pentoxide contained per month and it shall be apparent that such production can be maintained over a reasonable period thereafter, Continental undertakes to construct a plant in the State of Colorado for the utilization of the process for the manufacture of ferro-vanadium. In the event that such a plant shall be erected by Continental, all ferro-vanadium produced from such plant shall be sold by Continental, and after Continental shall have paid the expense of such manu-

(Testimony of Hayward L. Bigler.)

facture and deducted a reasonable amount for amortization and the sum of five per cent upon the net sales price for profit, the balance received upon the sale of the said product shall be paid to Blanding."

Now, do you recall whether or not in view of that—does that refresh your memory as to whether or not there was a discussion at the hotel meeting about the construction of a [1977] ferro-vanadium plant in Colorado?

A. No, it doesn't. And besides that, that says "undertakes." It doesn't say "agrees". If you will read the letter that Mr. Milenski wrote and in which I collaborated with him in reply to the letter that accompanied that, and after reading that contract, you will see the analysis that we made of it.

Q. Well, I mean you objected to the word "undertakes"—is that what you objected to?

A. He didn't agree to anything. He didn't even propose to. He "undertakes".

Q. Well, did you ask him to change the word "undertakes" to read "agree"?

A. Read the letter that we wrote in reply to this.

Q. Do you claim the letter you wrote in reply refers to that paragraph?

A. It refers to that entire contract.

Q. Well, I think the letter has already been read in evidence. I don't see it here. I have no objection to reading it again.

The Court: While you are looking for it, we will take a recess.

Mr. Alioto: There is nothing in the letter about that, Judge.

(Thereupon a recess was taken until 2:00 o'clock p.m. this date.) [1978]

Thursday, June 19, 1958—2:00 O'Clock P.M.

HAYWARD L. BIGLER

a witness on behalf of the defendants, on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Resumed)

Q. (By Mr. Alioto): Mr. Bigler, this morning when we spoke of the construction of a new mill with the help of certain government funds, do you recall now how much in government funds you received in connection with that construction?

A. No.

Q. Was it \$25,000? A. I don't know.

Q. Was there a man named Dunc Harrison associated with you at that time?

A. Yes, there was.

Q. What was his business?

A. He was in charge of our milling operation.

Q. In charge of what operation?

A. Superintendent of the milling operation.

Q. Milling operation.

Did you also have a man named Brinker working

(Testimony of Hayward L. Bigler.)

with you at that time? [1979] A. That's right.

Q. What was his business?

A. He was a consulting mining engineer. He was secretary of our corporation and in charge of our metallurgy work.

Q. I take it both of these men participated in any discussions or plannings so far as the building of your mill was concerned?

A. I would say Mr. Harrison did after he joined the company.

Q. Well, did he join it at the time your new mill was being constructed in 1943?

A. I don't remember the exact date. Mr. Brinker hired him.

Q. Mr. who?

A. Mr. Brinker hired him.

Q. Both of these men were very competent men, weren't they? A. We thought them to be.

Q. As a matter of fact, Mr. Harrison wound up as a superintendent of V.C.A.'s plant at Naturita?

A. Several months later, after our operations were all over with.

Q. And Mr. Brinker wound up as a superintendent at V.C.A.'s plant at Durango?

A. I don't know what his capacity is there. He is an [1980] employee of V.C.A.

Q. You say these two men didn't know how to build a mill in 1943?

A. I didn't say that.

Q. What did you say?

A. I would like to have the record read. I don't

(Testimony of Hayward L. Bigler.)

remember I said that. I don't know what you are driving at.

Q. I thought you said that some of the government engineers had messed this mill up so badly that you couldn't operate it, and that is why——

A. I didn't say that any government engineers messed it up so badly. I said the batch roasters were installed at the recommendation of the government engineers, and they were not so satisfactory as the old roaster that we had, and our recoveries were low, and it was impossible for us to operate at a profit.

Q. I take it Mr. Harrison and Mr. Brinker participated in the decisions to set up whatever kind of roasters were set up, didn't they?

A. I don't think that Mr. Harrison and Mr. Brinker were aware of some of the problems that were going to exist after that mill was started with that type of a roaster. They were influenced by the recommendations of the government engineers, and it was the government money that was going to pay for the cost of the construction. [1981]

Q. It was the same kind of government money that was going to pay for the cost and construction of the V.C.A. mill at Monticello, too, wasn't it?

A. I am not aware at all of how that V.C.A. mill at Monticello was constructed.

Q. But you are aware of the fact that it did work, aren't you? A. Yes.

Q. And you are aware of that because some of your ore went into that mill?

(Testimony of Hayward L. Bigler.)

A. No, not because of that.

Q. By what?

A. The V.C.A. mill at Monticello had Skinner roasters in them, and they were not batch roasters.

Q. Those mills were both built by the same government money, weren't they?

A. (Witness shrugs shoulders.)

Q. Let's go on to the discussion we had this morning, sir. Let me get at it this way: It would appear from the correspondence that in February, March and April of 1944 Mr. Milenski kind of took a leading hand in negotiations, rather than you. Would that be about correct?

A. In what?

Q. At the time of the meeting at the hotel in Grand Junction, and in conjunction with the formation of an association, [1982] it would appear that Mr. Milenski, rather than you, took the leading hand in negotiations. Would that be about right?

The Court: What negotiations?

Q. (By Mr. Alioto): Negotiations relating to the association, to the contract relating to the construction of a ferro-vanadium plant in Colorado.

A. I am not aware that there were ever any negotiations for the construction of a ferro-vanadium plant in Colorado. And the only reason that Mr. Milenski took what appears to be an active interest, a more active part in the negotiations at this time, was because Mr. Milenski had usually conducted the correspondence with Mr. Leir. I was not

(Testimony of Hayward L. Bigler.)

acquainted with the man; I never met him; I never even talked to him on the phone, as I remember.

Q. Then you were still active in this organization—— A. That's right.

Q. ——in the beginning of 1944, I take it, Mr. Bigler? A. That's right.

Q. At that time there was some kind of a negotiation with a Mr. Sitton. Do you know what that was all about?

A. Whose negotiation with Mr. Sitton?

Q. Well, apparently Mr. Milenski was carrying them on.

A. Mr. Sitton had nothing whatever to do with the Blanding [1983] Mines Company's operations.

Q. Let me show you a letter dated March 17, 1944. It is from Mr. Leir to Mr. Daniel Milenski in Cortez, Colorado, that refers to the association and the so-called Sitton deal, and it is that deal that I am interested in finding out about.

A. I know nothing about any Sitton deal. Mr. Sitton was present at that meeting in Grand Junction together with several other independent claim owners.

Q. Well, do you want to read that to yourself, Mr. Bigler, and then see if that letter refreshes your recollection at all as to any deal that Blanding had with Sitton?

A. (After perusing letter): I certainly don't know what he is referring to. I would infer that from that first paragraph (reading):

"Re-tel. Unable to agree in writing with Sitton

(Testimony of Hayward L. Bigler.)

on deal, and since we cannot we insist all officers of proposed organization be either Utah or Colorado residents as well as independent producers."

Must refer to some deal that in conversation in negotiations that Mr. Milenski had had directly with Mr. Leir in connection with the formation of an association, and I was never particularly interested in the formation of the association because I didn't think it would work.

Mr. Alioto: Let's offer this letter into evidence, if your Honor please, so that we can see what we are speaking [1984] of here. It has attached the contract that is already in evidence. We will offer it as plaintiffs' exhibit next in order in connection with this cross examination. Letter of March 17, 1944, from Mr. Leir to Mr. Milenski.

Mr. Archer: You are not offering it against the Carbide Company?

Mr. Alioto: Not at this moment, no.

(The letter referred to was thereupon marked Plaintiffs' Exhibit No. 158 in evidence.)

[See Book of Exhibits.]

Mr. Holland: Is that one letter?

Mr. Alioto: It is a letter that has a contract attached. It is the same contract you submitted, Mr. Holland. We can remove the contract, but it is physically attached rather hard at the moment, and we can do it at a more convenient time.

Mr. Holland: If it is the same one, why don't we save a little——

Mr. Alioto: I am going to do that, but it is at-

(Testimony of Hayward L. Bigler.)

tached a little hard, and I don't want to mess up the exhibit going in.

March 17, 1944, Mr. Leir writes to Mr. Milenski as follows:

"Dear Mr. Milenski:

"Thank you for your wire reading as follows:

"Retel Unable to Agree in Writing With Sitton on [1985] Deal and Since We Cannot We Insist All Officers of Proposed Organization Be Either Utah or Colorado Residents as Well as Independent Producers."

And then—that's a telegram—the letter follows:

"I must admit that I don't quite understand why you insist that all officers be Utah-Colorado residents as well as independent producers. For that matter, Mr. Sitton is eligible in both instances whether you complete your private deal with him or not. Of course, I hope that you will be successful in your agreement with Mr. Sitton as well as with regards to the association.

"Mr. Pleasants had a trial in court which delayed all his other work, but he promises to let us have the contracts today or tomorrow. As soon as we receive it it will be forwarded to you.

"Needless to say, both matters, the Sitton deal and the formation of the association, are considered of equal importance by me.

"Please keep me informed as to developments.

"Continental Ore Company.

"By Henry J. Leir."

The Witness: May I—

(Testimony of Hayward L. Bigler.)

• Q. (By Mr. Alioto): Yes, Mr. Bigler. [1986]

A. I call your attention that that says a private —“your private deal,” and not “Blanding Mines Company deal.”

Q. Well, was it a private deal?

A. I don't know. Mr. Milenski wrote the letter, and that letter is addressed to Mr. Milenski.

Q. That is what I am trying to establish, since we had a lot of other letters written by——

A. I say that Blanding Mines Company had no deal pending of any kind with Sitton.

Q. All right, that is what I want to establish. As far as you are concerned, you were not part of this Sitton arrangement?

A. I had no dealings whatever with Mr. Sitton.

Q. All right. Now, Sitton was a very substantial ore producer in the area at the time, was he not?

A. Well, he produced and shipped quite a lot of vanadium and uranium ore.

Q. Don't you recall at the time of that meeting in Grand Junction that Mr. Leir said that the “indispensable thing we must have is an assurance of a continuous supply of raw material, and that if an arrangement can be made with Mr. Sitton, who standing alone could assure us of that, that would be all right; if not, there ought to be an association of ore producers who could assure us of a continuous supply of ore during the time we have in mind” —do you recall that being [1987] said?

A. No, I don't, not at all.

Q. Now then, don't you recall that at that meet-

(Testimony of Hayward L. Bigler.)

ing at the hotel there was some discussion about the ore producers being organized for the purpose of affording a continuous dependable source of supply, and that the Durango plant might be purchased—the government plant at Durango—for the purpose of getting a real large competitor to both V.C.A. and U.S.V.?

A. No, I have no recollection of that at all.

Q. Were you in on any of the negotiations with either Mr. Sitten, Mr. Milenski, or anybody else, in connection with making an offer on the Durango plant?

A. No, I was not.

Q. In October of 1944 we have a telegram from Mr. Burwell, I think, relating to that.

In October of 1944 were you in any kind of commercial relations with Mr. Sitten?

Mr. Archer: I believe it is March, '44.

Mr. Alioto: March. You're correct, March, '44.

A. I certainly don't recall any personal relations that I had with Mr. Sitten in a business way, or as a representative of the Blanding Mines Company, with Mr. Sitten.

Mr. Archer: The telegram doesn't refer to this witness.

Mr. Alioto: No, the telegram refers to Sitten and [1988] others.

Q. (By Mr. Alioto): Now, that is about the same time as the meeting in the hotel, and at the same time as this association talk, and I am just

(Testimony of Hayward L. Bigler.)

asking the witness if he doesn't remember all the talk of forming an association of independent producers.

The Court: He says he doesn't know anything about it.

Q. (By Mr. Alioto): That is still the state of your recollection? A. That's right.

Q. That the association had nothing to do with the Durango plant?

A. Not to my knowledge.

Q. O.K.

A. In fact, I had very little interest in the formation of the association, as I told you, because I doubted if it would work.

Q. Well, it ultimately was formed, wasn't it, the Uranium Producers Association, headed by the same Mr. Balsley who was present?

A. Well, I don't know what—how this Uranium Producers was formed, but it was not formed at this time, to my knowledge.

Q. It ultimately was formed, and it has done a tremendous [1989] job, hasn't it? It has done a tremendous job? A. I don't know.

Mr. Alioto: Let me have this marked for identification.

(The contract referred to was thereupon marked Plaintiffs' Exhibit No. 157 for identification.)

Q. (By Mr. Alioto): I show you what has been marked for identification Plaintiffs' 157, which

(Testimony of Hayward L. Bigler.)

purports to be a copy of a contract signed by H. L. Bigler, president, Blanding Mines Company, and Dan Milenski, secretary, and on behalf of the Vanadium Corporation of America, by E. D. Bransome, president, and P. J. Gibbons, secretary, 420 Lexington Avenue, New York City. Will you be good enough to look at that contract, Mr. Bigler, and then tell us whether that is the agreement that was made between you and V.C.A. in June of 1942?

A. Yes, that is the agreement that supplements the agreement, or replaces the agreement that we had with Mr. Garbutt.

Mr. Alioto: We will offer this in evidence, if your Honor please—the agreement between V.C.A. and this witness.

Mr. Archer: Are you offering it against——

Mr. Alioto: At this point, against V.C.A. only, yes.

Mr. Holland: No objection. [1990]

Mr. Alioto: I take it there will be applicable instructions covering the rule.

The Court: Let it be admitted, there being no objection. I don't see its competency, materiality.

(The contract formerly marked Plaintiffs' Exhibit No. 157 for identification was now received in evidence and so marked.)

[See Book of Exhibits.]

Q. (By Mr. Alioto): Now, this is a long agreement and we won't go into all of it, Mr. Bigler.

(Testimony of Hayward L. Bigler.)

Paragraph II of this agreement provides as follows:

"All ore mined by Blanding on the leased premises and considered by it to be of too low grade to mill, will be separately stockpiled by Blanding on the leased premises, and at any time at the option of Vanadium shall be sold to it at the market price current at the time for such ore, less, however, in lieu of royalty payable by Blanding to Vanadium in respect of such ore, an amount equal to five cents per pound of contained vanadic oxide (V_2O_5) in such ore. If Blanding desires to sell this ore to a third party and Vanadium does not desire to purchase it on the above basis, the Blanding may sell such ore to a third party and pay Vanadium five cents per pound of contained vanadic oxide in such ore so sold. Except as Blanding shall mill, or separately and normally stockpile in order to mill, ore mined on the leased premises, whatever the grade of such ore, Vanadium shall have a like option to purchase such ore and to the extent that Vanadium shall elect not to purchase the same, a like right to royalty upon the sale thereof to a third party."

That is a little involved as legal language, but in practice wasn't the deal that if you sold your ore to a third party, the ore described in this paragraph, that you had to pay a royalty on it to the Vanadium Corporation of America?

A. That is right.

(Testimony of Hayward L. Bigler.)

Q. And the royalty was five cents per pound of contained vanadic acid in such ore?

A. That is right.

Q. Do you recall whether or not any ore was sold to a third party on which this royalty to V.C.A. was paid?

A. There were a lot of ores sold to Metals Reserve at a later date and V.C.A. was paid the royalty according to the provisions of that contract.

Q. Other than to Metals Reserve, did you sell any ore to a third party that called for the application of this five-cent royalty figure?

A. No, and neither did we sell to V.C.A. that I remember of.

Q. There is another clause, Paragraph VI. I want to call your attention to, and that is:

"Any claims located or acquired by Vanadium south of Spring Creek or east of Cottonwood Creek and within a distance of one mile of the claims covered by this agreement, may at the option of Blanding be operated and mined by Blanding upon payment of the royalties stated in Paragraph I and II hereof. Any claims located or acquired by Blanding [1993] south of Spring Creek or east of Cottonwood Creek and within a distance of one mile of the claims covered by this agreement may, at the option of Vanadium, be purchased by Vanadium at the cost of acquisition or location, including exploration, but the maximum price payable by Vanadium therefor shall be \$300 on any one claim, and any such claim purchased by Vanadium

(Testimony of Hayward L. Bigler.)

may be operated by Blanding on the same royalty basis as the claims covered by this agreement."

Do you recall whether or not you attempted to purchase any claims in the vicinity under this clause?

A. No, that is a carry-over from a provision in the Carbide contract, and while the Carbide contract was in effect, we did acquire and file on additional claims which we transferred to Mr. Garbutt, which were later included in the number of claims that were under lease.

Q. Then you made this same provision with the Vanadium Corporation of America?

A. That is right.

Q. Did you insist on the inclusion of that clause or was that simply presented to you?

A. We didn't object to it. It was in the other contract.

Q. The Vanadium Corporation proposed that clause giving them the right to acquire—— [1994]

A. No, they didn't propose it. It was in the Garbutt contract. And that was one of the indisputable and non-contestable provisions in there that we had no objection to.

Q. Who drew up this contract, do you know?

A. Mr. Milenski and Mr. Bissell worked out the wording on that.

Q. Who was the second gentleman?

A. Mr. Bissell, the attorney for the Vanadium Corporation of America.

Mr. Alioto: We offer this in evidence. I want

(Testimony of Hayward L. Bigler.)

to come back to this. I know you said you didn't remember anything about the Durango situation, but there is a telegram in evidence dated about the time of this meeting and association talk. It is February 29, 1944 from Blair Burwell in which he says:

"Brock advises——"

Mr. Holland: Your Honor, I object to his reading this telegram to this witness. It was not to this witness.

Mr. Alioto: I didn't say it was. I am trying to refresh his memory.

The Court: Let him see it.

Mr. Alioto: I will be glad to let him see it.

Q. You notice this telegram mentions a man named Brinker, as well as Milenski. Brinker was working with you at the time, wasn't he? [1995]

Mr. Holland: It doesn't mention Milenski, does it?

Mr. Alioto: No, the telegram mentions Brinker.

You already had the evidence that relates to Milenski, in the contact with Sitton.

Q. In February 1944 was Mr. Brinker working with you?

A. Mr. Brinker was one of the stockholders and officers of the Blanding Mines Company, and to that extent only did I work with Mr. Brinker, and what Mr. Brinker—how Mr. Brinker was negotiating and carrying on any of his personal affairs, I had no particular basis for knowledge of that, and I didn't care.

(Testimony of Hayward L. Bigler.)

Q. In other words, you did not care if Mr. Brinker and Milenski made a separate deal to set up a competitive vanadium mill, is that it?

A. If I didn't object to it——

Q. Yes?

A. ——it was perfectly within their rights to do so, and I didn't object to it.

Q. In any event, the fact that Brinker, we now have Brinker associated with Sitton in connection with the Durango plant, that still does not recall anything to your memory that Blanding——

A. That doesn't recall anything to my mind because Blanding Mines had no particular part in any of that.

Q. At this time were Brinker and Sitton the only other [1996] stockholders besides you in the Blanding Mines? A. Were who?

Q. In February 1944 was Mr. Milenski—you are right.

In February 1944 Mr. Brinker and Mr. Milenski both were stockholders of Blanding Mines?

A. That is right.

Q. Were there any other stockholders?

A. Yes.

Q. Do you recall what proportion of the stock was held by these two? A. Not exactly.

Q. Was it a majority?

A. But the controlling stock of the Blanding Mines Company was held by myself, Mr. Milenski and Mr. Brinker.

(Testimony of Hayward L. Bigler.)

Q. The three of you had more than fifty percent? A. Yes.

Q. Did Mr. Brinker and Mr. Milenski standing alone have more than fifty percent? A. No.

Q. Who were the other stockholders of Blandings at this time?

A. Well, there was a Donald Adams at Monticello, Utah; Marvin Lynan at Blandings, Utah; I believe D. E. Harrison held some stock in it, and one or two others that probably held a few shares. I can't recall. I couldn't see that it [1997] made any particular difference.

Q. Are you still in business, Mr. Bigler, or are you retired now?

A. I am still self-employed.

Q. What is your business at the present time?

A. Looking after my present investments in farming and ranching operations, and some mining claims and holdings in the Colorado Plateau area.

Q. Do you presently have any commercial relations with the Vanadium Corporation of America?

A. No.

Mr. Alioto: We have no further questions, if your Honor please.

Mr. Holland: I would like to put one more letter in the record on this 1944 situation.

Mr. Alioto: No objection.

(The document referred to was thereupon received in evidence and marked Defendant's Exhibit V-2-N.)

Mr. Holland: This is a letter dated March 31st,

(Testimony of Hayward L. Bigler.)

1944, from Mr. Leir to Blanding Mines Company, attention Dan Milenski.

"Your letter of March 24 and ours of March 27 no doubt crossed in the mails.

"Before entering into further details, we would like to make some general remarks so that you can properly appraise our situation:

"When shipments on V_2O_5 from Utah and Colorado decreased, and at a time when we needed them the most, we decided to make ourselves independent. We created equipment for the treatment of foreign vanadium ores, and frankly speaking, we are not in need of any material from Utah/Colorado today, unless we should want to expand our present business considerably.

"We will buy from you only if you are willing to make long-term contract with us which will protect our interests to that any changes we might make now in your favor (and to the detriment of our own conversion of foreign ores) would not prove harmful to our own interests one day.

"As long as your output is only 15,000 pounds per month there are no particular difficulties with regard to our own outlets, but the moment you achieve a larger output, we would like to see an 'association' created, because the 'association' would give us a better standing in the marketing of the finished product.

"The price must be based on the Na_2O contents because whatever Na_2O we have in the acid will absorb a like quantity of V_2O_5 . [1999]

(Testimony of Hayward L. Bigler.)

"We would be willing to buy the material in full carloads, which would in turn enable you to make considerable savings on freight and packing. We would accept so-called asphalt laminated paper bags, which we can buy for you at about \$100 per 1,000 delivered Utah, or 10¢ per bag. The bags can easily contain 100 pounds.

"In giving you these advantages the 2% Na_2O basis which I mentioned in Grand Junction should be reduced to 1% Na_2O .

"We believe that the above will show you our position in the matter, and we await your reaction before going further into the other details which, we are certain, can be worked out to our mutual advantage."

Mr. Holland: That is all of the witness.

Q. (By the Court): Did you sell any to them on the basis of one or two percent sodium content?

A. No, sir, we did not.

Recross-Examination

Q. (By Mr. Alioto): Mr. Bigler, at this meeting at the hotel, did you say in substance or effect that you were against any association of any kind?

A. No, I did not.

Q. As a matter of fact, Mr. Milenski was appointed to [2000] get together some kind of articles for an association, wasn't he?

A. I think that there was a committee appointed there at that meeting, and I believe that Mr. Milen-

1800 *Continental Ore Company, et al., vs.*

(Testimony of Hayward L. Bigler.)

ski was one of the members of the committee, as I recall.

Q. Yes. Now, prior to that time, when you were supplying Continental Ore Company, you suddenly ceased supplying that company and turned your production over to the Vanadium Corporation of America. You have already testified to that.

A. Yes.

The Court: Was that on account of the price?

A. It was partially on account of the price and some of the other provisions and reasons that I believe I stated heretofore, the lacking of the grinding requirements and the saving of freight. V.C.A. picked up all the shipments that were made to them right at our mill with their own trucks.

Q. If you had sold to Continental, what would you have had to have done?

A. That mill was one hundred and some odd miles from the closest railroad and we would have had to package it and deliver it by truck to a rail point for shipment to whatever point was designated by Continental, or Chicago, or New York.

Q. You considered the price that was offered you by the Vanadium Company of America as a good business proposition?

A. We considered it far better than installing crusher equipment for grinding and shipping according to the specifications that were being placed by the Continental Ore Company.

Mr. Alioto: May I have Exhibit 131?

(Testimony of Hayward L. Bigler.)

Q. Mr. Bigler, didn't there come a time when Continental Ore offered you \$1.20 per pound?

Mr. Holland: Your Honor, we could go on forever here. I do not think this is proper recross.

Mr. Alioto: The Court has just asked a question which I submit is contrary to the evidence. We have some information on the very subject matter that the Court inquired into. It will take me five minutes to get at it. I would like the opportunity to do it.

The Court: Go ahead. If you can get through anything in five minutes, let us have it. All of this is immaterial to the issues in this case. I have indicated as much right along.

Q. (By Mr. Alioto): That \$1.20 price was f.o.b. Blandings, was it not?

A. I don't remember. You have a letter there—

Q. Let me show you Mr. Leir's letter to Dan Milenski of March 16th, 1942.

A. I would not consider this an offer.

Q. I mean the \$1.20 price that was spoken of was f.o.b. Blanding? [2002]

A. That is right, but this is not a specific offer. May I read the paragraph that you are referring to?

The Court: Read the letter.

The Witness: It says:

"Dear Mr. Milenski:

"We refer to our letter of March 5th, to which we have not yet received any reply. As you can see from the enclosed clipping, prices for ferro alloys will remain unchanged during the second

(Testimony of Hayward L. Bigler.)

quarter. However, we have a need which makes it possible for us to pay our suppliers an especially high price, which would work out in your case to be as high as \$1.20 f.o.b. Blanding. If you are interested in a contract, let us know."

Now, that just says that it would work out in our case — might work out in our case — "which would work out in your case to be as high as \$1.20."

Q. You answered in connection with the Judge's question that your main objection was that you did not want to refine this ore as they wanted to have it refined.

A. We didn't choose to grind it and ship it in such form.

Q. Now, you had an offer from Continental in May, 1942 through Mr. Dan Milenski that if you did not want the \$1.20 for flakes, that is, the ground material, he would pay \$1.17½ for lumps, didn't you? A. I don't remember.

Q. It is in evidence in this case, in any event, as Exhibit 131.

A. I might call your attention, inasmuch as you keep emphasizing that, that until such time as we had been offered and began to receive \$1.10 a pound, we had never been offered by the Continental Ore Company more than \$1.02 or .03 cents a pound less the commission in most cases.

Q. Do you recall that when you broke away from the Continental Ore Company to sell to V.C.A. that was at or about the time that V.C.A. and Carbide started negotiating, as you have testified?

(Testimony of Hayward L. Bigler.)

Do you recall at that time, too, there was some letter from Washington which indicated that it was all right for the Blanding production to go to Apex and Continental?

A. It was not an order for us to ship.

Q. No, it was not.

A. And we were not coerced by Mr. Garbutt or V.C.A. to sell to V.C.A.

Q. Who was the man named Eaton in your organization? L. Eaton.

A. L. Eaton?

Q. I show you a letter dated February 23rd, 1942 to [2004] Apex Smelting Company written by an L. Eaton, who purports to be an Assistant Secretary. Will you be good enough to tell us who he is?

A. That was a secretary of Mr. Milenski's, and that letter undoubtedly was written in Mr. Milenski's absence.

Q. Will you just read the letter? Is there something about the letter that you wish to correct in the light of your recollection of what happened?

A. No.

Q. This letter represented the agreement—

The Court: What is the letter?

Mr. Alioto: We will offer it into evidence, if your Honor please.

Mr. Holland: I have not seen it.

Mr. Archer: You are not offering this against Carbide, are you?

Mr. Alioto: At the moment against V.C.A.

(Testimony of Hayward L. Bigler.)

Mr. Holland: I do not know how long this is going to go on. It has nothing to do with my re-direct examination whatever.

Mr. Alioto: I think it has, your Honor, and this is the last document that is going in.

The Court: If that is the last one, let it go in.

Mr. Alioto: We have difficulty to under your Honor's comment that something they do in connection with an Apex source of supply is not material to this action in 1942. We are offering it on that basis.

(The document referred to was thereupon received in evidence and marked Plaintiffs' Exhibit 159.)

The Court: Your witness, Mr. Leir, testified at the time he severed connections with Apex that he had ample material there.

Mr. Alioto: He was speaking of a specific month in January, if your Honor please, speaking of a specific month, and we know that Mr. Bayer wrote to the government and said they could not operate because of lack of supplies, and that is a Jury question to be determined.

Mr. Holland: He didn't say——

Mr. Alioto: That they could not operate to capacity because of lack of supplies.

The Court: And they exported a lot of it.

Mr. Alioto: I think the record shows otherwise. I think there is a factual conflict there and we would like an opportunity to present it.

In any event, this letter of February 23rd, 1942,

(Testimony of Hayward L. Bigler.)

is from the assistant secretary of Blanding Mines to Apex Smelting Company:

"We have your wire of February 14 and letter confirming the wire. No report was made at an earlier date for the reason that we were endeavoring to become more familiar with the situation.

"As we take the letter we received from the War Department, we are not directed to sell our product to you, and as previously advised, other arrangements have been made for the sale of our product and we have informed the War Production Board that we desire to continue with our present sales arrangement.

"We regret that we are unable to sell our product to you; however, you are aware of our set-up and the fact that we are merely operating under a lease. We are producing now under somewhat of a handicap for the reason of adverse climatic conditions with result of poor roads."

Q. At the time he stated that you were operating under a lease, that was the lease with Carbide, is that correct, is it not?

A. What is the date?

Q. February 1942.

A. That is true.

Q. And the lease that was shortly thereafter turned over to the Vanadium Corporation of America?

A. That is right.

Mr. Alioto: We have no further questions of this witness.

(Testimony of Hayward L. Bigler.)

Further Redirect Examination

Q. (By Mr. Holland): Were you aware that had you accepted this offer \$1.20 or \$1.17½ from Mr. Leir, you would have been unable to fill it because price regulations would have limited your price to \$1.10?

A. I just don't recall. I remember that there was some price establishment at that time, but as to what date I became familiar with it, I am not sure.

Mr. Holland: That is all.

Mr. Alioto: We have no further questions.

The Court: Step aside.

(Witness excused.)

FREDERICK F. KETT

a witness called by and on behalf of the defendants, Vanadium Corporation of America, and being first duly sworn, testified as follows:

The Clerk: Will you please state your full name and address?

The Witness: Frederick F. Kett, 409 Hare Lane, San Mateo.

Direct Examination

Q. (By Mr. Holland): Mr. Kett, were you formerly employed by the Vanadium Corporation of America? A. I was.

Q. In what capacity were you employed by that company in 1938?

(Testimony of Frederick F. Kett.)

A. You mean before or after Mr. Reece died?

Q. After Mr. Reece died.

A. Well, I took his job as general manager of mining.

Q. Do you remember when he died?

A. Yes, January 19th, 1938.

Q. Then on July 1, 1938, you were general manager of mining? A. That is correct.

Q. Did you hold that position during the period 1938 to 1949?

A. Yes, up until the time I retired.

Q. When did you retire, Mr. Kett?

A. June 1st, 1950.

Q. Mr. Kett, if you do not object, will you state your age?

A. Yes, I will be 76 next October.

Q. Mr. Kett, in the year 1940, I believe you started the Naturita plant, reopened it, is that correct? A. Yes.

Q. Did you have charge of that?

A. Yes. [2009]

Q. Prior to the opening of that plant or prior to the preparations for opening that plant, had Vanadium Corporation been buying any ore on the Colorado Plateau? A. Yes.

Q. Immediately prior, I mean?

A. Yes.

Q. When after 1938 did you start buying ore, do you remember?

A. Oh, late in the summer of 1939.

Q. That was when you first started to buy ore?

(Testimony of Frederick F. Kett.)

A. I think so.

Q. And you opened the plant in the summer of 1940, is that correct? A. Yes.

Q. Did you have charge of fixing what prices Vanadium Corporation would pay for ore?

A. From the independent miners?

Q. From the independent miners.

A. Yes, I did.

Q. What did you do in respect to establishing your opening price?

A. Well, we made quite extensive calculations based on what we thought it would cost to produce the oxide through our metallurgist in Bridgeville, and from that we figured that we could pay *around* *cents* per pound contained V for [2010] two percent ore, and that was the basis of our starting point of our payments.

Q. The price schedule which is in evidence in this case, Mr. Kett, shows a price of 21 cents for two percent ore. Do you know how that price came in?

A. We started at 20½ but we didn't get any ore.

Q. Why was that?

A. Well, the U.S.V. were paying 21 cents and we thought as we were 14 miles closer to the suppliers, that our calculation of 21 cents was too high to the miner to save a 14-mile haul anyway.

Q. (By the Court): You mean 20½?

A. Beg pardon?

Q. You said 21. You mean 20½?

A. No, we had figured originally at 20, but we

(Testimony of Frederick F. Kett.)

didn't put that price on for the miners because we didn't think we would get any at 20, because U.S.V. were paying 21, but we did think we would get it at $20\frac{1}{2}$. So we tried it at $20\frac{1}{2}$, but we still didn't get it, and we decided to settle for 21.

Q. (By Mr. Holland): And then there is in evidence a price schedule showing that very shortly, in July of 1940, you changed the schedule so that you paid on the basis of each tenth of a percent in the ore—in other words, your first schedule had a certain price of 21 cents for—

A. For two percent.

Q. —two percent ore, and for two and a half percent ore there was a slightly higher price.

A. Yes.

Q. And then in July, I believe, you put in a price which made the break at each tenth of a percent, is that correct? A. That's correct.

Q. For what reason did you do that?

A. Well, of course, that was to the advantage of the miner to get it on every tenth instead of every half percent. [2012] Naturally, if he brought in ore running 2.49, he would get paid just the same for it as he would for bringing up any ore that went 2.190 on the half-percent break. But on the tenth break he would get it on every tenth of one percent, which is about five times better for him.

Q. Was this change made on the basis of any agreement you made with U.S.V.?

(Testimony of Frederick F. Kett.)

A. Not at all. That was our effort to get miners to bring us the ore.

Q. Did you know whether or not U. S. Vanadium established a similar scale to the one you established in July—that is, with breaks on each tenth? A. No, I do not.

Q. Now, Mr. Burwell testified that there was some conversation in New York between him and Mr. Van Fleet and Mr. Bransome at which it was not agreed, but there was a statement made that they would each pay 21 cents for ore. Do you know of any such agreement?

A. I never heard of it.

Q. Did you ever receive any directions from Mr. Bransome to pay 21 cents and to keep the price pegged there?

A. No, I don't think so. Not as far as I remember.

Q. Did you do anything else besides this tenth of a percent price scale in order to try to induce the miners to sell their ore to you rather than to U.S.V.? [2013]

A. Yes, we did. These miners were all little fellows, financially, and they had no equipment whatsoever. The miners just had hand-drilling, and so forth. So we thought those boys would look very favorable on having a little help, and we went and spent \$30,000 on small compressor outfits. Each one consisted of a small portable compressor and a jackhammer drill, and drills, and forge to sharpen the steel with, and tools like that. So we got about

(Testimony of Frederick F. Kett.)

15 of those, and we spread them around among the most productive ones of our suppliers on the basis they would pay, I think, \$1.00 a day rent—I have forgotten exactly—which was to apply on the purchase of that equipment if they ever wanted to buy it, or if they never wanted to buy it, then whenever they quit shipping to us they returned the thing to us, and the dollar a day that they had paid and which had been deducted from the proceeds of the ore that they brought to us, well, that finished the deal.

Q. And did you do anything else in an effort to attract ore?

A. Well, we put in a pretty efficient little sampling plant, for one thing, which they liked very well.

Q. What did you do about hauling allowances?

A. About what?

Q. Hauling allowances.

A. No, not at that time, nothing. That came on much later. [2014]

Q. When did that come on?

A. I would say about late in '42.

Q. And what happened? Tell the jury what happened in respect to hauling allowance.

A. Well, the ore that had been coming to us—and we were 14 miles closer to most of the suppliers—started going past us, and we didn't know why our old customers were going 14 miles further. But we investigated, and the talk was that they were paying something extra to these fellows to

(Testimony of Frederick F. Kett.)

haul it. So we investigated that, and the first one that we heard was getting an extra allowance was one of our best producers, and we heard—no, he himself said he was getting \$2.00 a ton for the haul.

So I asked them down at U.S.V. was this fellow getting his \$2.00 a ton, and after they investigated they said no, he wasn't getting anything extra.

However, these rumors kept coming in about haulage allowances—no stated amount to anyone, but just what they had to offer him to induce him to pass by us.

We at that time tried to get either a settlement sheet made out by the U.S.V. to these fellows, you see, which would show that hauling allowance, if there was any, or a sworn statement from him.

Now, while they all said that they were getting this allowance, there wasn't one of them that would give us any proof.

So in order not to have any more jawing with them about possible haulage allowances, we frankly came out and said, "We will pay you fellows three cents per ton mile for hauling up to 60 miles."

Well, they liked that idea of a fixed amount that they didn't have to dick for, or complain about, or anything else, and the ore started coming in again.

We afterwards raised that to four cents, and made a much longer haul, too. I mean, we, instead of limiting it to 60 miles as at first, I think we paid for any old mileage at four cents.

(Testimony of Frederick F. Kett.)

Q. And was that done in accordance with any agreement you had with United States Vanadium?

A. Oh, no, not at all. I don't think they knew anything about it until it was an accomplished fact.

Q. Did you ever hear of, or know of any connection with any agreement with United States Vanadium as to what price would be paid miners for ore?

A. None whatever.

Q. Mr. Burwell testified that in 1942 he and Mr. Bransome and you, and possibly John Hill, met in Dove Creek, Colorado, at which time Mr. Bransome made the statement that he was going to raise his price to 31 cents, and Mr. Burwell said he would go along. Did you attend any such meeting? [2016]

A. No, I never attended any such meeting. I never heard of it until it was mentioned here lately.

Q. What was your policy as the man in Vanadium Corporation who determined the prices to be paid for ore, what was your policy in connection with raising the basic base price of ore? In other words, why did you—

A. They never were raised to amount to anything from our original figures.

Q. Except when they went from 21 to 31, is that correct?

A. Oh, yes, but that was Metals Reserve, that wasn't us.

Q. That was because of Metals Reserve competition in selling ore?

A. Yes.

(Testimony of Frederick F. Kett.)

Q. Well, why weren't they raised? Why didn't you raise your price?

A. Well, the ore was coming in satisfactorily at those prices.

Q. Well, you have testified that U.S.V. at times paid haulage allowances and got them to haul ore by your plant. Why didn't you raise the base price, say, from 21 to 22 cents, instead?

A. I didn't want to start any price war on that, because their costs were very much less than ours were, always, and they could have just kept on raising and raising until they put us out of business. [2017]

Q. Did you feel that you were paying the miners a fair price for the ore?

A. Yes, we did.

Q. Did you ever discuss ore prices with anyone at United States Vanadium?

A. No, never.

Q. Not even in a casual way?

A. Well, possibly something might have been said like "These miners are never satisfied with the prices."

The other guy would say, "No, they never are."

But that was not a discussion of ore prices.

Mr. Holland: I believe that is all.

Cross-Examination

Q. (By Mr. Alioto): Mr. Kett, when some miner told you he was getting a higher price or a hauling allowance from the United States Vana-

(Testimony of Frederick F. Kett.)

dium Company, it was your practice, was it not, to go talk to the officials of U.S.V. and check that miner's story? A. No, not at all.

Q. Didn't you do it at all?

A. I did it once.

Q. Now, who was it that you talked to in the United States Vanadium Company?

A. Mr. Haldane.

Q. And who was Mr. Haldane?

A. He was their general superintendent at Uruvan.

Q. Do you recall approximately when that was, Mr. Kett?

A. No, I don't but I suppose it was about the middle of '40.

Q. You went to Mr. Haldane and asked him whether or not it was true that he was paying a hauling allowance, is that it?

A. No, I telephoned him.

Q. You telephoned him? A. Yes.

Q. What did you tell him over the telephone, Mr. Kett?

A. That this man, Lyon, who was passing by us, claimed he was doing it because he was getting \$2.00 a ton over and above whatever the price was, which was for the haul.

Q. And then what did Mr. Haldane say to you? What did the gentleman from U.S.V. say to you, Mr. Kett?

A. Well, he waited about two days until he had investigated it, and—he didn't tell me; I think I

(Testimony of Frederick F. Kett.)

had left Naturita by that time. But, anyway, he conveyed the idea that Mr. Lyon was lying.

Q. So on the basis of that you didn't give him the \$2.00 hauling allowance, did you, Mr. Kett?

A. No, we did not.

Q. Now then, you said in answer to your counsel's question that you didn't want to start a price war against U.S.V. [2019] Is that because their costs were so much lower than yours?

A. That was pretty much the reason, all right, but we were paying about all the traffic would bear. If we raised that price very much we couldn't make anything on the oxide.

Q. Approximately what was your cost of producing oxide as compared to the United States Vanadium's, Mr. Kett?

A. Well, I don't know what their cost was, but ours was very much—was double theirs.

Q. Your cost of producing oxide?

A. I think so.

Q. Yes. You have had conferences, of course, with both Mr. Van Fleet and Mr. Burwell on many occasions, have you not?

A. No. On very rarely—not as far as I remember. Only one in nine years.

Q. One in nine years?

A. Something like that.

Q. Do you remember having a conference with Mr.—do you remember a conference with Mr. Van Fleet about competitive activities on the Colorado

(Testimony of Frederick F. Kett.)

Plateau relating to the building of a mill at Gateway, Colorado?

A. That wasn't a conference; that's two fellows meeting in the middle of the street and saying, "Did you hear there was a mill going up in Gateway?"

"Yes."

"Well, what do you think about it?" [2020]

"Well, I don't think it will be a success." Period.

Q. And you didn't regard it as very important at all? A. Not at all.

Q. So you wrote a memorandum about that conference to the president in New York, didn't you? A. That's right.

Q. Why did you write a memorandum about it to the president in New York if you didn't think it was important?

A. I thought he should know about it, just as much as Mr. Van Fleet, or anybody else. It was in our neighborhood. And there weren't very many mills starting down there, so naturally, it was of interest.

Q. It was of interest as a competitive matter, I take it?

A. No. You mean as a competitor?

Q. Yes.

A. No, sir. We didn't—we never considered them as a serious competitor.

Q. Did you ever get suggestions from any of your personnel that you ought to acquire claims

(Testimony of Frederick F. Kett.)

for the purpose of seeing that they didn't fall into competitive hands, Mr. Kett?

A. Received what orders, for what?

Q. Did you ever receive recommendations from any of your personnel that certain claims ought to be acquired for the purpose of keeping them out of the hands of the competitors?

A. You mean personnel working under me?

Q. Yes, sir.

A. Well, we were all on the lookout for claims all the time, and we certainly wanted to keep them out of the hands of U.S.V.

Q. Yes. How about anybody else?

A. No, we weren't worried about anybody else. The boys were asking so much money for these claims that you had to be a millionaire to talk to them.

Q. Well, there is a letter in evidence, Mr. Kett, from Mr. Viles, who was your assistant manager of the western division in Naturita.

A. That's right.

Q. He later became the head man, didn't he?

A. That's right.

Q. And it is addressed to you at 420 Lexington Avenue, New York, in connection with the purchase of Dry Valley. And in that he says:

"In regard to the purchase of the Dry Valley property belonging to the Moly Corporation, there is considerable low-grade ore in the Frisco and Waterfalls group, and this property, in my mind, if it could be purchased, say, for \$2,000, would be

(Testimony of Frederick F. Kett.)

a good investment if only to prevent some outsider getting ideas in regard to the Monticello plant."

Now, you don't contend that that outsider getting ideas in regard to the Monticello plant was the U. S. Vanadium Company, do you?

A. Oh, no. And furthermore, I remember that letter. But it didn't make sense to me, because here's two claims—only two or three claims—I don't know how many there were—quite a ways from the Monticello plant, and how anybody, if they acquired two claims, could get any ideas about any plant at all, was to my mind pretty absurd.

Q. In any event, Mr. Kett, do you remember there was an occasion when you worked out a joint arrangement with the United States Vanadium Company to mine on your mining claims?

A. Yes.

Q. And do you remember under that arrangement that you had an overdraft of about 300,000 pounds?

A. I was told that. I had nothing to do with the arrangement whatsoever.

Q. But you knew that you had an overdraft of 300,000 pounds, didn't you?

A. No, sir, I didn't.

Q. Don't you recall having a discussion of working out a method of getting that overdraft worked out?

A. Yes. But you asked me if I knew it was 300,000 pounds. I didn't.

Q. Yes, sir. But there appears on—

(Testimony of Frederick F. Kett.)

A. I knew there was an overdraft.

Q. There appears to be a letter here from you written in August, 1941, to Mr. Bransome, your president. It's quite understandable you wouldn't remember something that far back. But in that letter you say:

"It is possible that Van Fleet may present some sort of a concrete proposal on the subject of the Dry Valley contract assignment before my return to New York from Colorado. It occurs to me that it may be that Dry Valley possibly is looking very sick right now and that the probability of getting even 10,000 tons from it may be very slim. This is probably not so, but it could happen. Therefore, I think that either you or Mr. Gibbons should phone Van——"

and that's Van Fleet, of the competitor——

"——and suggest that his proposal embody the following: The 10,000 tons — or rather, 300,000 pounds of recovered V₂O₅ to be taken from the property before June 1, 1942. If this amount is not taken from the property before that date, then our obligation to return them any further ore in liquidation of the 300,000 pounds of oxide is cancelled."

Now, does that refresh your memory?

A. Yes. But you didn't ask me that.

Q. Well,—— A. You said—— [2024]

Q. Yes, Mr. Kett,——

A. You said at the time that we started to deliver them ore——

(Testimony of Frederick F. Kett.)

Q. Well, I didn't mean——

A. That's long before that letter was written, and at that time I didn't know about the commitments.

Q. Well,——

A. But later on, when you talk about Dry Valley, yes, at that time I knew——

Q. And you knew that you had an overdraft of 300,000 pounds of oxide which you had acquired from the other company?

The Court: Before we enter into Dry Valley——

Mr. Alioto: If your Honor please, I was going to——

The Court: ——we will take a recess.

(Short recess.)

Mr. Alioto: If your Honor please, Mr. Holland has informed me that the chief managing agents of the Vanadium Corporation of America, namely, Mr. Bransome, Mr. Gibbons, and Mr. Laub, will be called to the stand as witnesses, and in view of that I would rather take up these facts with them, rather than to go further with Mr. Kett, although I understand Mr. Holland has a question he would like to ask.

Mr. Holland: Just one question.

Redirect Examination

Q. (By Mr. Holland): Mr. Kett, when you stated that the costs of U. S. Vanadium were considerably less than Vanadium Corporation's, you

(Testimony of Frederick F. Kett.)

were referring to the Vanadium Corporation's costs at Naturita, were you not? A. Oh, yes.

Q. You were not talking about the Peruvian costs? A. No.

Mr. Holland: That is all.

Mr. Alioto: We have no further questions of the witness.

Q. (By the Court): Why was their cost lower than yours? What particular reason?

A. Well, they own their own mines, which were very productive, and were very close to them, and I think most of their tonnage, except what they were buying from the independent miners, was not over about six or eight miles away, and a downhill haul all the way. But we had mines in the same vicinity, and it was a much longer haul to us, and they were nowhere near as productive mines as the ones that they had, so their costs must have been less. Also, they were handling about three times the tonnage per day that we were. So, of course, their costs were less on that basis and for that reason. But they were less—much less.

The Court: That is all. You can stand aside.

(Witness excused.)

PATRICK J. GIBBONS

called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Q. (By the Clerk): Will you state your full name and address?

(Testimony of Patrick J. Gibbons.)

A. Patrick J. Gibbons, 41 Constantine Place, Summit, New Jersey.

Direct Examination

Q. (By Mr. Holland): Mr. Gibbons, were you employed by the Vanadium Corporation in 1938?

A. I was. [2027]

Q. When did you first enter the employment of Vanadium Corporation?

A. Well, I first entered the employment of Vanadium Corporation in 1919, but I had been with the predecessor company prior to that. I went into the vanadium industry in 1913.

Q. Will you state the various positions you held with the Vanadium Corporation through the years?

A. I started as paymaster, and then around about 1920 I was works accountant, later plant auditor.

In 1926 I went to New York as assistant treasurer, and about the same year became assistant secretary and assistant treasurer. And in 1930 I became secretary-treasurer and held that position until 1943, when I became executive vice-president, which position I held until my retirement in 1952.

Q. Will you describe for the jury the problems involved in going into the vanadium business, and in a general way tell them what it is all about? They may not have entirely clear the picture.

A. I can't do it in a few words, but I will do my best.

Vanadium is a business in which the product,

(Testimony of Patrick J. Gibbons.)

to begin with, does not sell itself, so therefore, in my explanation, I am going backwards. I will start with the first important need in the business.

Q. We had better not go prior to the year 1938.

Mr. Alioto: Yes, we will agree with that.

A. When I say I go backwards, I mean in my statement, not in time. Anything I say will apply to the years 1938 to 1949, inclusive. What I mean is I want to start at the end instead of the beginning with the sales and service departments, who built up the demand for the product, vanadium.

Now, the sales department, in addition to the usual salesmen who knock at the doors of the directors of purchase and the general purchasing agents, also have a department of highly trained technical men. These men go into the mills where they consult and advise and take off their coats and help the melter or advise the metallurgical engineer or metallurgist, whoever is there, in the applications of vanadium.

In addition to that there is another department, which is helpful, but not within sales—that is the research and development of new products. Research and development, they work on new applications, new alloys. And with the help of new products, or applied metallurgy, which you call the boys in sales, will discuss with the technical men in the steel companies not only the application of ferro alloys to their industry, but new uses for it, and will go so far as, if they themselves, in their laboratory, have an idea of a new alloy steel, vana-

(Testimony of Patrick J. Gibbons.)

dium steel, they will make small heats in little loop pots about this big (indicating), and if they are satisfied as to the steel they have gotten from them, they will go into a mill and make arrangements with the steel maker to make them a commercial heat, which, if it is possible, they will just have laid the groundwork to have some user of steel—I mean, now, the consumer, the customer of the steel company—take that heat and use it in his application. It may be an automobile industry, railroad, or the tool industry.

If that arrangement cannot be made, they will have the heat made, anyway, and we, the Vanadium Corporation, will then pick up the slab or billet resulting from that heat, and we would store it in our warehouse. In my day that was at Bridgeville, Pennsylvania. And over the years they would have these different steel billets piled up there, and if at any time a consumer had an idea about a new steel, he would call in to our research people, or they would be calling on him, and after discussion every once in awhile you would see a crane pulling one of those billets out of the pile, and they would ship it to the consumer. Generally that was done without cost to the consumer and was an expense to the corporation.

In addition to that its research group worked on pamphlets and handbooks and the like, and we have one handbook of which the research people, and I think the corporation as a whole, is very proud. It is called "Vanadium in Iron and Steel."

(Testimony of Patrick J. Gibbons.)

And we have been told by some of our steel-making friends that their smelters have made presents of this [2030] handbook, and they use it just as that, as a handbook. That is what makes the vanadium business. There has got to be a demand for it. It doesn't sell itself.

The next part, and an important part, is the subject of ore reserves. As you have no business unless there is a demand for your product, you have no product unless you have ore reserves.

Mr. Alioto: Your Honor, I am loathe to interrupt at this point, but it seems that this is a long narrative statement containing conclusions and hearsay, and it isn't proper. I suggest that questions and answers be asked.

The Court: I do not know of anyone who is in a better position to tell the Court and jury what they ought to know and what they would like to know about this very important subject. I see nothing improper about it. Overruled.

Proceed.

A. (Continuing.) The ore reserves.

The ore reserves have come into this lawsuit, and they are very important—not only very important, but necessary. And quite a bit of money can be tied up in your ore reserves. My own company, in 1938, decided to go into the Colorado Plateau, and we had to start at scratch. We had just a few ore bodies out there that had been with us since 1919, and maybe 1930 or something.

And so we had to contact independent miners.

(Testimony of Patrick J. Gibbons.)

Our men had to scour the whole Plateau looking for locations that were free in order to locate, develop, and see if you had mining properties in the beginning, and trying to operate a 100-ton-a-day mill. That was quite a problem.

But we finally got our reserves in shape so we were able to be listed, about the end of the war, as about a 750-ton-a-day operation. That was in two plants, one at Naturita and one at Durango, both in Colorado.

Now, you have your ore reserves, which costs you a lot.

The next step, a very important step, but not as important as reserves and the market, is the leaching plant. The leaching plant is the plant to which you feed the raw vanadium ore. And by what is called the roast-quench-leach process, you subtract the vanadium values from that raw ore in the form of fused black oxide, fused pentoxide, or just oxide. You hear the terms intermingled. It all means the same thing. That is what we consider an intermediate product, the product from which we make our end product, which is ferro-vanadium.

Ferro-vanadium is produced either by the alumina thermit method—that is, melting with aluminum, getting the heat from the aluminum—or the electric furnace, where the arc produces the heat.

The electric furnace is an expensive installation. Power, alone, in an electric furnace is very important, because when you contract for power you

(Testimony of Patrick J. Gibbons.)

contract to take so many units of power for a certain period of time—a month—well, if you contract for 12,000 kilowatts, you take 12,000 kilowatts, or you pay for about 60 percent of it whether you use it or not. And so that becomes expensive.

That is where the danger of an intermittent operation hits the operator.

Now, we have ferro-vanadium, which is turned over to the sales department, who now have to build, and have built, a market to which they sell it.

All of this costs money. It takes a considerable investment to get to that point, and it takes a lot everywhere along that line, along that flow sheet, whether in the reduction mill or the leaching plant. You have to have your metallurgists, your engineers, and they have got to control, because if you don't get a 75 percent recovery from your ore—I will illustrate that in figures.

Milling heads, milling ore in the Colorado Plateau will average roughly around two percent, meaning you have 40 pounds to the ton. You must recover 30 pounds of that 40 in your finished black oxide to have what we would consider a good, efficient operation.

All of this costs money, and that is my story of vanadium. [2033]

Q. (By Mr. Holland): Mr. Gibbons, Mr. Alioto put some figures on the board here—ore we had purchased from U. S. Vanadium. You will notice a figure in 1938 of 130,052 pounds. Is that figure correct? A. Yes.

(Testimony of Patrick J. Gibbons.)

Q. And during that same year was the Vanadium Corporation's mine in Peru in operation?

A. Yes, it was.

Q. And have you figured how much vanadium we brought up from Peru for our needs?

A. I have no figure with me, but I know the figure.

Q. Do you know the figure?

A. Yes. It was about one million and three-quarters pounds of vanadium contained, which would be about three and a half million pounds of V_2O_5 , which you have there. That is V_2O_5 .

Q. That would be three and a half?

A. About three and a half million.

Q. And for the year 1939 there is a figure of 517,000.

Do you mind if I erase some of this?

Mr. Alioto: No objection at all. [2034]

Q. 847 Palms—I believe it was testified that that was Maggie C. ore—

A. It's 848, just to be correct.

Q. 848.

Do you mind if I change that?

Mr. Alioto: No, not at all. Change it down below to. You have to make the addition conform.

The Court: That question I didn't understand. What was the amount in 1939?

Mr. Holland: 517,848 pounds from the Maggie C. operation.

Q. Is that correct?

1830 *Continental Ore Company, et al., vs.*

(Testimony of Patrick J. Gibbons.)

A. There is missing there (on the blackboard) about 77,500 of direct purchases that year.

Mr. Holland: Those are direct purchases from U.S.V.

A. Direct purchases from U.S.V.

Q. At various prices.

A. That special order had three prices on it; it had 80c, \$1.10, \$1.18.

Q. Now, during that year how much did we bring up from Peru?

A. V_2O_5 , about four and a half million.

Q. Four and a half million V_2O_5 ?

A. Yes.

Q. And in the year 1940 there is 200,000 pounds? [2035]

A. Yes. The balancing figure from the Maggie C.

Q. That was taken out of Dry Valley?

A. Some of it from Dry Valley, yes.

Q. And during that year how much did you bring up from Peru?

A. Two million nine, roughly, in V, which would be five million eight.

The Court: Where did you process this ore that you brought from Peru?

The Witness: At Bridgeville, Pennsylvania; in our reduction plant there.

Those figures, Mr. Holland, I have rounded them out. I haven't held them to the pound.

Q. (By Mr. Holland): What?

A. I say, I haven't held them to the pound.

The Court: That's approximately?

(Testimony of Patrick J. Gibbons.)

The Witness: They are approximate figures, but within five—less than 5%.

Q. (By Mr. Holland): So that approximately 925,000 pounds was purchased from U.S.V. during those three years, is that correct?

A. That's correct.

Q. And at the same time 13,800,000 pounds were brought up from Peru, is that correct?

The Court: Is that correct? [2036]

The Witness: Yes.

Q. (By Mr. Holland): Now, do you know during those three years how much vanadium oxide was sold to the French Government at the request of the U. S. Government?

A. I can give you the total. I think the shipments were made in '38 and '39, approximately 712,000 pounds of contained V_2O_5 in concentrates and high-grade ore. That's included in the 13,800,000.

Q. Then without that shipment to the French Government we would have attained approximately all of our requirements from Peru, is that correct—could have?

A. We could have. In other words, the purchase for the oxide on the Maggie C. agreement just about equalled what we shipped direct from Peru to the French.

Q. Do you remember what price that was sold to the French at?

A. I think there were two prices there, 72¢ and 76¢ per pound.

(Testimony of Patrick J. Gibbons.)

Q. Now, Mr. Gibbons, we have heard a lot about Maggie C. and nobody seemed to know very much about her. Could you tell us anything about Maggie C.?

A. Well, tell Mr. Alioto I was introduced to the sinister lady.

Mr. Alioto: Nobody else knew her.

The Witness: That Maggie C. was a contract which we referred to as the Maggie C. contract. A certain ore body which was owned by the Vanadium Corporation was adjacent to the mine workings of the U.S.V. and in 1939, with the authority of our board of directors, Mr. Bransome negotiated an agreement. The negotiations took place between Mr. Bransome for Vanadium—he was President of the Vanadium Corporation—and Mr. Van Fleet, who was President of U.S.V.

Under this agreement U.S.V. were to mine the Maggie C. and convert the raw ore to finished black oxide, using the 75% recovery figure which I mentioned before, which means that for every pound they took out—they got 40 pounds, but they had returned to us 30 pounds in the form of black oxide.

Now, the handling—. Oh, this contract was a toll agreement, so-called, and for every pound that they presented to us or shipped to us we paid 65c a pound V_2O_5 contained in oxide with the proviso that if their cost increased we would pay 75c per pound of V in black, and I believe the terms of the contract was five years.

(Testimony of Patrick J. Gibbons.)

It was a simple, little—less than two-page contract, just more a memorandum agreement than a contract. That is the part of the Maggie C. contract.

Now, the taking of the oxide under that contract was between the Vanadium Corporation and the Electro Metallurgical Sales Corporation, because Electro Metallurgical Sales sold all the products of U.S.V., so that any drawings under [2038] that or requisitioning was requisitioned against Electro Metallurgical Sales. I didn't requisition it because at this time I was in charge of procuring raw materials, such as vanadium ore and chrome ore, for the operations.

The Court: But the point here, the point I think the jury and the Court want to know, why were you making a contract with this other company. Why didn't you handle it yourself?

The Witness: We didn't have a treatment plant in Colorado at the time. Our treatment plant in Colorado was not built I believe until 1940, sometime in 1940, and we had an old plant that was not fit for operation, and in '39—

The Court: Did you consider it a good business proposition from your standpoint to make this arrangement with the other company?

The Witness: From our standpoint, the standpoint of Vanadium Corporation, I considered it an excellent proposition.

The Court: Proceed.

Q. (By Mr. Holland): Now, under this Maggie

(Testimony of Patrick J. Gibbons.)

C. arrangement we were—V.C.A. were furnishing its own ore, is that correct?

A. Oh, yes; the Maggie C. property belonged to the Vanadium Corporation, and the 65c or the 75c we paid was just for the tolling of the ore, the running of it through their [2039] leaching plant.

Q. In the nature of a toll charge, is that correct?

A. In the nature of a toll charge.

Q. Now, I believe V.C.A. took deliveries of oxide ahead of the mining of the ore, is that correct?

A. Yes. That is the fact. I would requisition the New York office of Electro Metallurgical Sales for shipments, and they kept the shipments rolling along until one day they said, "Wait a minute, boys. You're getting away ahead of yourselves," and that is the 1940—the 200,000 pounds—that was the last requisition they accepted from us under the Maggie C., and that was shipped to us I believe over the first half of 1940, the last shipment being received in June. And then they said, "Now, we are in a position where you have taken nearly twice as much in oxide as we have taken in ore, so until we get that in balance no more oxide." So they proceeded to still work the ores from the tonnages they took out in a rather leisurely fashion and they worked the full year, finishing out the year 1940; they worked all the year '41, and were in two or three months of '42 before they reached the 717,848 which we had taken from them. Now—

Q. They first worked out the Maggie—

(Testimony of Patrick J. Gibbons.)

A. I was going to say, the Maggie C. had gone out of the picture before that and a supplemental agreement was made covering certain claims of Dry Valley, and the final tonnages [2040] of ore to meet—to balance out what we had taken from them—came from the Dry Valley deposits.

Q. Now, if V.C.A. had been unable to make the deal with U.S.V. to buy this oxide during 1938-1939-1940, could it have brought that oxide up from its own Peruvian mine?

A. Yes. But there is a point there, too. It could be brought up. It would be in the nature of high grading a mine, taking out the richer ores, which you like to hold to average the ores which may be lower.

As a matter of fact, under the pressure of the war after 1941 we brought up big tonnages of that raw ore to run here through a plant which we built at Bridgeville, and we could have done it at that time, we could have enlarged our leaching plant at Bridgeville, which was done later, but right at this period it was much more—we thought it better business for us to buy as long as we could and work the agreement, the toll agreement at Maggie C., rather than to bring up that richer ore and put the money in the increased leaching plant.

Q. Mr. Gibbons, you spoke about "under pressure bringing up ore from Peru during the war." Was Vanadium Corporation under pressure from the Government to produce as much vanadium and ferro-vanadium as it possibly could?

(Testimony of Patrick J. Gibbons.)

A. Yes. There was a gentleman in the old O.P.A.—his name was Harry Masters—I believe his name has been mentioned before—who was the—— [2041]

Q. You said the O.P.A. You mean the O.P.M.?

A. O.P. — Office of Price Administration — wasn't it?

Q. Wasn't he in the Office of Production Management? A. Maybe that was it.

Q. I show you (handing witness document)——

A. I get mixed up on those alphabetical outfits. (Examining offered document). Office of Production Management, that's it.

Mr. Masters called on us regularly. He was in my office at least once a week, usually on Monday morning, because I think he lived in New York and he used that as an excuse to spend the week-end in New York: He had to see me on Monday morning. But he pressed us and told us at one time that he expected seven million pounds of contained V in ferro-vanadium to be produced by the industry in 1942, of which he was asking the Vanadium Corporation to increase their production until we would hit the four million pounds of contained vanadium in ferro, and we had to go through various maneuvers to do that, to bring up the richer ore, increase the capacity of our leaching plant at Bridgeville. We finally made an agreement with the Defense Plant Corporation and built a plant for them at Monticello, Utah.

Q. In connection with that did you receive a

(Testimony of Patrick J. Gibbons.)

letter from Mr. Masters dated August 21, 1941 (handing document to witness)?

A. (Witness examining.) This is Mr. Masters' letter. [2042] Addressed to the attention of Mr. Bransome, in which he refers to a conference held in my office, between myself, Gus Laub, who was then our General Manager of sales, and Jerome Strauss, our chief research man.

Q. As a result of this conference or as a result of this letter was the Monticello plant built?

A. I think it was after the receipt of that letter and through the action of Mr. Masters' department that Mr. Bransome called on Mr. W. O. Clayton, who I believe was at that time—he was in O.P.M.—he was with Jesse Jones—and that was the beginning of the discussions of Monticello.

Mr. Holland: Offer in evidence as Defendants' next exhibit.

Mr. Alioto: If your Honor please, there is no basis in evidence for admitting a document which was written by a Government official to a Mr. Bransome, no basis that I know of.

The Court: Objection overruled. Exception allowed.

(Letter dated August 21, 1941, from Masters to attention of Bransome, received in evidence and marked Defendant V Exhibit 2-O.)

Q. (By Mr. Holland): Mr. Gibbons, this letter refers to a conference in which you were, does it not? A. Yes, it does. [2043]

Q. In the course of your regular duties at Vana-

1838 *Continental Ore Company, et al., vs.*

(Testimony of Patrick J. Gibbons.)

dium Corporation was this called to your attention at the time it was received?

A. It was.

Q. It says:

"Dear Mr. Bransome:

"Subject: Vanadium increase in production.

"Confirm telephone conversation with your good self this afternoon and referring to a conference held in the office of your company last Friday between Messrs. P. J. Gibbons, Gus Laub, Jerome Strauss——"

Who is Jerome Strauss?

A. Jerome Strauss was head of our Research Department, Research and Development.

Q. (Reading.) "——Jerome Strauss and myself, it has been fully explained to your company the present supplies of vanadium available to this country, both domestic and foreign, will fall far short of the quantity which this office is asked to supply during 1942. Estimates of consumption for 1942 have been furnished to your company, and while it may not be possible next year to reach the estimated requirements it is absolutely necessary that every effort be made by producing companies to approach as [2044] nearly as possible the estimated requirement figure of 7,000,000 pounds.

"From information furnished us by your officials named above your present production rate, including products both from domestic and Peruvian sources, is about 2,700,000 pounds. We understand that it may be possible for your company to achieve

(Testimony of Patrick J. Gibbons.)

by the end of this year a production rate of 3,000,000 pounds."

Now, is he talking about contained V in ferro-vanadium?

A. Contained V in ferro-vanadium, yes.

Q. And that would be the equivalent of about 6,000 pounds of oxide—I mean 6,000,000 pounds?

A. Are you referring——

Q. I am referring to——

A. It would be just double. [2045]

Mr. Holland: (Reading)

"This office requests that you increase this by 1,000,000 pounds so that during the year 1942 your company's production may reach 4,000,000 pounds. This, of course, means pounds of vanadium content."

I need not have asked the question, for he answered it in the letter.

"The undersigned has been under the impression that your quickest available source of an increased supply of vanadium would be from your Peruvian property, but in our telephone conversation today you state that this is not the case. We trust, however, that you will make every effort to increase your output from Peru as much and as quickly as is humanly possible.

"Production from your properties in Colorado and from ore which you purchase in both Colorado and Utah, as we understand, is limited only by treatment facilities. We trust that you may provide without delay the necessary equipment to in-

(Testimony of Patrick J. Gibbons.)

crease your domestic production so that the total increase in production of your company may not be less than 1,000,000 pounds in 1942."

Q. Now, by "treatment facilities" what was he referring to?

A. He was referring to our leaching plant in Bridgeville, [2046] our Naturita plant, because there was no question about the reduction end of our business. It was the leaching end that would be the bottleneck.

Q. The production of oxide?

A. The production of oxide, yes.

Mr. Holland: "Because of the vital interest of this office in increasing vanadium production we are prepared to recommend to the Reconstruction Finance Corporation such financing as your own company may not be prepared to assume.

"We have made an appointment for Mr. Bransome to discuss this matter with Mr. William L. Clayton, Deputy Federal Loan Administrator, at his office in the Lafayette Building next Tuesday afternoon, August 26th, at 3:30 o'clock.

"As the undersigned will not be in Washington next week, his assistant, Mr. E. K. Jenkes, will be at your service next Tuesday, since I assume that you may wish to discuss this matter with Mr. Philip D. Reed and Mr. Jenkes before your interview with Mr. Clayton. Mr. Jenkes will be glad to accompany you when you have your conference with Mr. Clayton."

(Testimony of Patrick J. Gibbons.)

Q. Mr. Gibbons, as a result of this conference and letter was the Monticello plant built?

A. Yes. What is the date of that letter, Mr. Holland? [2047]

Q. August 21, 1941.

A. Yes. Well, in the month of December, 1941, there was an agreement drawn up between the Defense Plant Corporation and Vanadium Corporation in which Defense Plant Corporation would put up or appropriate the sum of \$1,200,000 to build a plant at Monticello, which the Vanadium Corporation were to operate.

Q. What other steps did Vanadium Corporation take to meet this 4,000,000-pound quota which was set by the government?

A. Well, as I said before, we had a 25-ton leaching plant at Bridgeville. Now, a 25-ton leaching plant in the Colorado Plateau is a small plant, but at Bridgeville it was a large plant because it was taking 13 and 14% V — not V_2O_5 — but 26% V_2O_5 into the bath.

Q. That is from Peruvian ore?

A. From Peruvian ore. That is about thirteen times the value of Colorado raw ores, which means that that 25-ton plant would be the equivalent roughly at least of a 250-ton plant, because the ore will go through faster.

Q. What was your policy in respect to purchase of ores, oxides and raw materials from other people?

A. In the purchase of raw materials—vanadium-bearing raw materials—we bought practically any-

(Testimony of Patrick J. Gibbons.)

thing. I did it personally. We bought flue dust, we bought sludges from chemical plants. Anyone that would come around and said they [2048] had anything that might be as high as 10% V_2O_5 in their material we would deal with them, and we introduced into our operations at Bridgeville flue dusts, various sludges, slags, and the like, which we purchased in the open market.

Q. (By the Court): What disposition did you make of your product?

A. Our product, ferro-vanadium, was sold direct to the steelmakers to be introduced into the steel bath.

Q. Was it allocated?

A. It was during the allocation years, yes.

Q. (By Mr. Holland): Mr. Gibbons, did you ever know or hear of any agreement between Vanadium Corporation of America and Union Carbide or any of the Union Carbide group respecting the monopolization or attempt to monopolize the vanadium market?

Mr. Alioto: What period are you referring to, Mr. Holland?

Mr. Holland: During the period 1938 to 1949.

A. Of my personal knowledge, nothing. I neither knew of any such arrangements nor heard of it from any other member of our organization.

Q. Did you ever know or hear of any such agreement respecting the prices to be paid for ferro-vanadium or vanadium products of any kind?

A. I did not. I never heard of it. [2049]

(Testimony of Patrick J. Gibbons.)

Q. Did you ever hear of any such agreement respecting the division of the vanadium market between the companies in any way?

A. No, never did.

Q. Did you ever hear of any agreement or any policy on the part of the Vanadium Corporation to exclude Continental Ore Company or anyone else from the vanadium business?

A. Not to my knowledge. To my knowledge there was no such arrangement.

Q. You never heard of it?

A. Never heard of it.

Mr. Holland: That is all.

Cross-Examination

Q. (By Mr. Alioto): Mr. Gibbons, how much of the ferro-vanadium market is controlled by the two companies, V.C.A. and Electro Metallurgical Company?

Mr. Holland: Are you speaking of now or——

Mr. Alioto: Between 1938 and 1949.

The Witness: I would say the two companies controlled better than 95% of it.

Q. (By Mr. Alioto): Except for the Continental Ore Company, for the period between 1938 and 1949, you had a hundred percent of it, didn't you, of ferro-vanadium production and the ferro-vanadium sales? [2050]

A. Well, with the exception of a few little drabs like the Castleton outfit, which has been named here before, I believe that is substantially correct.

(Testimony of Patrick J. Gibbons.)

Q. Did Castleton produce ferro-vanadium?

A. They produced black.

Q. Black fused oxide?

A. Black fused oxide.

Q. Ferro-vanadium was 100%, not 99.9, was it not?

A. Oh, ferro-vanadium?

Q. Yes.

A. You see, I was thinking in the line of the vanadium industry. Ferro-vanadium I would say yes.

Q. 100% between the two of you?

A. Yes. Yes, pretty close.

Q. And generally you had two-thirds of that production and Electromet about one-third, isn't that about the proportion?

A. Well, I wouldn't know that. We would try to guess what proportion we had. We knew—felt we knew from the inquiries our sales people made and investigations that we had the greater portion of it, but the exact percentage we had, that we wouldn't know, because we would lose business in one year and get it back another year. But I don't know what percentage that we could claim we had.

Q. Now, then, turning to vanadium oxide between the two companies, including what you produced and what you purchased [2051] from other sources, you had about 97 to 100% of the vanadium oxide, didn't you, in the period from 1938 to 1949?

A. I wouldn't dispute those figures, although I wouldn't say yes or no to them.

Q. That sounds about right to a man who has

(Testimony of Patrick J. Gibbons.)

been in this industry so long and knows the conditions? That is about right, isn't it?

A. I wouldn't dispute your figures.

Q. Did you say that the Government wrote you a letter in August, 1941, telling you you had to increase your production facilities? Isn't it a fact that two months prior to that time Mr. Bransome went down to Washington and told them that they did not have to increase domestic production facilities?

A. I couldn't answer to that. I wasn't with Mr. Bransome.

Q. Didn't you ever hear in the organization that Mr. Bransome went down to Washington and told the people in Washington that they did not need to increase domestic production facilities? Didn't he ever tell you that?

A. At this time the war was coming on and Mr. Bransome was in Washington almost all his time. I saw him possibly once a week, and at that time it would just be probably to put me on the pan for what I had done wrong while he was away.

Q. Then your answer is, you never knew Mr. Bransome was down in Washington in June of 1941 and told the Government representatives that there was no need to increase domestic [2052] production of vanadium?

A. Not as a general—I don't know that he ever made any such statement as that, as a general statement.

(Testimony of Patrick J. Gibbons.)

Q. Well, did he make it as a particular statement?

A. I say I don't know whether he did or not.

Q. In any event, you say there came a necessity in August, 1941, which you recognized to increase production facilities and to get all the ferro-vanadium that you could possibly get, is that it?

A. It wasn't a situation that we recognized. It was a situation that was brought to us by the O.P.M.

Q. When it was brought to you, then you recognized it?

A. Well, a war was approaching and I, if I may go beyond here, had gone through the first world war in the vanadium business.

Q. Yes.

A. And I knew exactly what would happen, and the same thing did happen.

Q. At the time that you realized that this was going to happen, and you knew exactly it was going to happen, there was a little struggling outfit in Chicago called the Apex Smelting Company that was producing ferro-vanadium, wasn't there?

A. I have heard of Apex only since this Denver suit and this one. I personally did not know Apex.

Q. You knew that that company through Continental made an [2053] offer to the Vanadium Corporation of America to put its facilities at the disposal of the Vanadium Corporation of America so that they could use their production facilities in

(Testimony of Patrick J. Gibbons.)

producing ferro-vanadium to the fullest capacity; you know that, don't you?

A. That didn't come to me. I heard that there was some correspondence to that effect, but at the time that this is supposed to have happened I had no knowledge of it.

The Court: Well, we will recess at this time until nine-thirty tomorrow morning.

(Thereupon an adjournment was taken until 9:30 o'clock a.m., Friday, June 20th, 1958.)

Friday, June 20, 1958, 9:30 a.m.

PATRICK J. GIBBONS

a witness called by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination—(Continued)

Q. (By Mr. Alioto): Mr. Gibbons, yesterday afternoon you testified that in August of 1941 you had a conference and thereafter received a letter from Mr. Masters who was a government official in which he urged upon you the absolute necessity of using production facilities to the fullest.

Do you recall that general situation?

A. Yes, I do.

Q. Now then, do you recall that at or about that time you had a request from the Apex Smelting Company to farm out—that they were willing to

(Testimony of Patrick J. Gibbons.)

let you use their facilities for the purpose of producing ferro-vanadium?

A. I didn't know it at the time, but I have learned of it since that the request was made.

Q. Did you participate in the decision not to use those production facilities of the Apex Smelting Company?

A. I believe I did. They were not the facilities that we needed. Apex didn't have a leaching plant. They had a [2056] reduction plant. And we had full facilities for the reduction.

Q. Well, did your organization examine the type of ferro-vanadium that was produced by the Apex Smelting Company at the time?

A. That I don't know.

Q. Did you inquire as to whether or not its ferro-vanadium had been cleared by the government as ferro-vanadium of sufficiently good quality to be sold to the government?

A. I personally did not. It would be within my province.

Q. As a matter of fact, I take it that decision not to use those facilities was not made by you, it was made by Mr. Bransome, wasn't it?

A. I really don't know who made it. I did not participate in the decision.

Q. Now then, you were told to use these production facilities—the production facilities should be used as much as possible. In view of that, why did you go out and take the Blanding production away from Apex?

(Testimony of Patrick J. Gibbons.)

A. I can't answer anything in regard to Western operations.

Q. All right.

A. And the building up of supplies in the West.

Q. Mr. Gibbons, I show you a copy of your minutes of [2057] May 7, 1942, and ask you if you will be good enough to examine those minutes and then state whether that is your signature on those minutes.

A. (Examining.) That is my signature, as secretary of the board of directors.

Mr. Alioto: Thank you, Mr. Gibbons.

We will offer this in evidence, if your Honor please, because it sets forth some of the contract terms in connection with the Blanding transaction. You recall yesterday we couldn't get that—

Mr. Archer: This isn't being offered against the Carbide Company?

Mr. Alioto: No.

Mr. Holland: No objection.

(Minutes, May 7, 1942, received in evidence and marked Plaintiffs' Exhibit No. 160.)

[See Book of Exhibits.]

Mr. Alioto: Mr. Holland, the date of May 7, 1942, was inserted on that as a result of a telephone call with Mr. Meir, who, I think, gave us that date.

Mr. Holland: Mr. Meir, not Mr. Leir.

Mr. Alioto: Yes. Subject to any correction, I take it we can stipulate that that date set forth there in pencil is the correct.

Mr. Holland: It looks about the correct date.

(Testimony of Patrick J. Gibbons.)

Mr. Alioto: The minutes of the board of directors of the Vanadium Corporation of America at this point read as follows:

"The President reported the Corporation had entered into an agreement to acquire vanadium ore property in Blanding, Utah. He stated such agreement contemplated royalty payments of five cents per pound of contained V_2 in ore produced, with an advance royalty payment of \$20,000 at time agreement was consummated. He stated it was planned to treat the ore mined from this property in the plant now under construction at Monticello, Utah."

Now, do you know, Mr. Gibbons, whether or not you actually mined quite a quantity of ore from those claims for use in your Monticello plant?

A. I believe we did.

Q. And this was the ore that you—this was the claim that you purchased under the so-called Garbutt transaction that we spoke of yesterday?

A. Yes, they were the Garbutt claims.

Q. You testified at some length yesterday, Mr. Gibbons, as to what it takes to get into the vanadium business. Isn't it a fact that an undertaker out of Pittsburgh started the Vanadium Corporation of America with \$20,000?

A. I would say no, it is not a fact.

Q. Was there a Mr. Flannery who started that company? [2059]

A. I knew him for years.

Q. And—

(Testimony of Patrick J. Gibbons.)

A. He was my first boss.

Q. He was also Mr. Burwell's boss in the Standard Chemical Company, wasn't he?

A. No.

Q. Didn't he later go into the Standard Chemical Company?

A. No, that was Mr. Joseph Flannery.

Q. Well, there were two brothers?

A. Yes.

Q. All right.

A. James J. was the original vanadium man. Joseph was the Standard Chemical man.

Q. Well, his brother was also with him in the Vanadium Corporation, was he not?

A. Yes, but James J. was never with Joseph in Standard Chemical.

Q. All right. But one of the Flannery brothers who started the Vanadium Corporation of America, after he sold out, went with Standard Chemical?

A. That's right. That was——

Q. Wasn't there a deal made at that time that having left——

Mr. Holland: Your Honor, we are getting about 20 years before 1948. [2060]

Mr. Alioto: This man testified at length as to what it takes to get into the vanadium business.

The Court: I have ruled not before 1938 and I don't want to have to repeat that again.

Mr. Alioto: Well, I didn't—he testified at length as to what it took to get into the vanadium business.

(Testimony of Patrick J. Gibbons.)

and I was simply trying to show how the Vanadium Corporation started.

The Court: You are leading into something else.

Mr. Alioto: All right. I take it, without the necessity of making an offer, that I may not inquire into whether or not the Vanadium Corporation was started with \$20,000 just prior to the First World War?

The Court: No. We don't—we want to know what happened in '38.

Mr. Alioto: All right.

The Court: I can't see how it would be material what happened here when your client is still in Europe at that time.

Mr. Alioto: Your Honor let this witness testify at length as to what it takes to get into the vanadium business. Now, the best evidence of what it takes——

Mr. Holland: What it took in 1938.

Mr. Alioto: The best evidence of what it takes to get into the vanadium business is what the Vanadium Corporation got in for, the \$20,000 we are speaking of, but I won't argue the point further. I understand your Honor's ruling on it.

Mr. Holland: You have got an exhibit in evidence that shows it cost three million for the Vanadium——

Mr. Alioto: 20,000 is what you started it with. In any small beginning——

(Testimony of Patrick J. Gibbons.)

The Witness: But the 20,000 isn't a correct statement, if I may say so.

Mr. Alioto: Well, maybe—may we go into that? May we go into that?

The Court: What is it?

Mr. Alioto: The witness says that 20,000 isn't correct.

The Court: He just answered your question.

Mr. Alioto: All right. If your Honor please, we will go on to another subject.

Q. Now, as a matter of fact, 1938 was kind of a recession year, wasn't it, business wasn't very good in 1938?

A. Business was not as good in '38 as it had been in '39. It was not a recession. Call it a dip in business.

Q. Well, whatever we call it, 1937 was certainly a recession year, wasn't it?

A. It was a good year, '39 was a good year, but in between '38— [2062]

Q. There was a dip? A. That's right.

Q. Now, in the light of looking back at that situation now, from what we know today, that was a very fine time to get into the vanadium business, wasn't it?

A. Well, I wouldn't say it was a good time, I wouldn't think that a recession time would be a good time. Anyone breaking in should break in on the boom, not on a recession.

Q. Anyone breaking in should break in just before the boom, isn't that the way it should be?

(Testimony of Patrick J. Gibbons.)

A. If they are bright enough to know when the boom is coming.

Q. That's right, and be carried with it?

A. Yes.

Q. Now then, actually shortly after the beginning of 1938 export prices for vanadium went to \$1.70 for the vanadium acid and \$3.00 for the ferro-vanadium, f.o.b. New York?

A. I couldn't say of my own knowledge, but I believe that your figures are substantially correct.

Q. And so that export market afforded a wonderful opportunity for anybody getting into the business at that time to establish himself firmly in that business, didn't it?

A. Well, you continue to use the expression "getting into the business." If "getting into the business" means purchasing and acting as a broker, I don't talk about that as getting into the business. That I would refer to as attempting to skim off the cream of the business.

Q. All right.

A. Getting into the business means building mills, ore reserves, building an organization to work with the steel companies, that would be getting into the business.

Q. Let's assume that getting into the business involved making a contract for the production of ferro-vanadium and making contracts for oxide supplies. You have no objection to anybody starting into a business in that fashion, do you, Mr. Gibbons?

A. No.

(Testimony of Patrick J. Gibbons.)

Q. It happens every day in American life?

A. They are always buying from the small contractors. They must be handled.

Q. And even big business sometimes starts from very small beginnings, doesn't it?

A. Oh, yes.

Q. And that little trickle of little business then becomes big business and that's the story of America, isn't it, Mr. Gibbons?

A. That's the story of America.

Q. You have no objection to it, do you?

A. No. [2064]

Q. Now then, how long did that export remain at \$1.70 for vanadium oxide and \$3.70 for ferro-vanadium?

A. Mr. Alioto, I know nothing about the export market. That will have to come from other members of our organization.

Q. You yourself have never participated in any transactions whereby the Vanadium Corporation of America and the Electro Metallurgical Company on the other hand worked together on export orders?

A. No, not personally.

Q. And you know nothing about that?

A. Know nothing about the workings of it.

Q. I didn't say whether you know anything about the workings of it, Mr. Gibbons. You say you know nothing about that?

A. I know that shipments were made, arrangements were made to ship abroad, but I know

(Testimony of Patrick J. Gibbons.)

nothing about the negotiations that let up to the actual production and shipment of the material.

I want to explain that never in my connections with the company was I ever in the sales department. I was the operating man.

Q. You know that Mr. Bransome arranged with Mr. Sneath to kind of split export orders, don't you, in the period from 1938 to 1940?

A. I do not. [2065]

Q. You never heard of that?

A. Not as you stated, no.

Q. Well, you say not as I stated. Do you know of any collaboration—

A. I know that shipments were made, but whether it was collaboration or agreement to split those, I must emphatically say, no, I know nothing about it.

Q. Do you know they were joint shipments, that is, where you took half and Electro Met took half, and Mr. Bransome arranged for the whole thing?

A. No, I don't. I know Mr. Bransome made arrangements, but as to whether he made them with Mr. Sneath or not, I must say I know nothing of that personally.

Q. Do you know whether he made them with anybody in Electro Met? A. I do not.

Q. Do you know a French company named Eugene, (spelling) E-u-g-i-n-e?

A. Eugene, no.

Q. Do you know a man named Painvin, (spelling) P-a-i-n-v-i-n?

(Testimony of Patrick J. Gibbons.)

A. Painvin — wasn't he with Electro-Chimie — Societe d'Electro-Chimie?

Q. Yes.

A. I knew and had met Painvin several times.

Q. And was Mr. Bransome an agent in America for Mr. Painvin?

A. I believe you are talking of the war years.

Q. I am talking about 1939.

A. We knew—let me put it, we knew Electro-Chimie, we worked with Electro-Chimie, we worked under patents acquired from Electro-Chimie.

I might say that our contact with Electro-Chimie was close. And if Mr. Bransome worked as an agent for Painvin, or for Electro-Chimie, I don't believe there was ever a contract to that effect. Mr. Bransome will have to testify to that.

Q. Does Electro-Chimie have office space in your building in New York, did it ever have?

A. They did not have when I left the company in 1952.

Q. Do they have now?

A. I have never met any Electro-Chimie people in the New York office. Now, I won't say they don't have space there, whether they rent it from Vanadium or it is separate space, there is a secretary and one man in an office on the same floor as the Vanadium in the Graybar Building.

Q. And they were there during your time?

A. No, they were not there in '52. Since '52.

Q. Did you folks at any time after 1943 start

(Testimony of Patrick J. Gibbons.)

producing a ferro-vanadium with a 70 to 80 percent content? [2067]

A. We may have. We would produce any grade of vanadium that a consumer requested. There is no trick in producing a high concentrate. Vanadium reduced is just a question of whether you increase or decrease the iron scale in your mix.

Q. Isn't it a fact that after 1945 you started producing more high-grade vanadium than low-grade vanadium, and the situation prior to that time was just the opposite?

A. It would all depend upon the demand.

Q. Well, what is the fact, forgetting about the demand, what was the fact—didn't you start producing the higher grade vanadium after 1945?

A. Our grades gradually went up from—in the '40's—until we were making a 50 to 55. That is my recollection.

Q. Yes. And you have remained with that higher grade ever since, have you not?

A. Well, I don't know what the story has been since '52 to date, but we were making the higher and the lower. We would make anything the customer requested.

Q. Has your company ever sold vanadium oxide for direct reduction to the steel bath?

A. I wouldn't like to say yes or no to that question. I would rather let—

Q. Somebody else knows that?

A. —let somebody else answer that.

Mr. Alioto: We have no further questions.

(Testimony of Patrick J. Gibbons.)

The Court: What do you know about your relation with the Continental Ore Company, do you know anything about it?

A. I had no relationship at all. I was all the way—I was secretary, treasurer of the company, to '43, and from then on I was secretary-vice-president, and my duties were the operations of the reduction plants of the company, not the leaching plants in the West.

The Court: In any of your business—in any of your relations with your company, did you have any contact in the nature of agreements or anything with the Continental Ore Company?

A. Not—

The Court: Not that you know of?

A. Not to my knowledge. As a matter of fact, prior to 1957, I believe I met Mr. Leir once, and that was a casual meeting, because he called on another member of our organization, who was not there, and I met him through courtesy.

The Court: When was that, do you recall?

A. I don't recall whether it was in '38, '39—it has been some time ago—before the war. But it was not a business meeting in the sense that we were discussing buying or selling.

Mr. Alioto: May I ask the witness, if your Honor please, one further question about identification of initials—it looks like— [2069]

I have here an inter-office memorandum from Mr. Laub called the special report in connection with his dealings with Mr. Christianson of the

(Testimony of Patrick J. Gibbons.)

Apex Company. It is Exhibit 62. And the document is dated April 14, 1942.

Mr. Gibbons, it has some kind of an initial as it appears to me—it's a little hard to read on the photostat. I wonder if you could tell us whose initial that is. It's a little hard to read, I admit, on that photostat.

A. Mr. Alioto, I don't think that is an initial. Someone has just drawn two lines there to indicate this is a paragraph to read. I don't think that is an initial. [2070]

Q. (By Mr. Alioto): You do not think that is an initial that you recognize?

A. It doesn't look like one I know. It isn't mine.

Q. I know it isn't yours. I think as a matter of fact the original letters went to Mr. Bransome. Thank you very much.

The Court: Is there anything further from this witness?

Mr. Holland: No more questions, your Honor.

The Court: You will be excused.

(Witness excused.)

Mr. Holland: Call Mr. Bransome.

EDWIN D. BRANSOME

a witness called by and on behalf of the defendant Vanadium Corporation of America, being first duly sworn, testified as follows:

The Clerk: Will you state your full name for the Court and Jury, please? And your address?

(Testimony of Edwin D. Bransome.)

The Witness: Edwin D. Bransome, Rumson, New Jersey.

Direct Examination

Q. (By Mr. Holland): Mr. Bransome, what is your present occupation?

A. I am in the happy situation of having none. I retired from my last position a few weeks ago.

The Court: What does a man do after he retires?

A. Well, he gets awful upset for a while, your Honor.

The Court: Pardon me for the interruption.

The Witness: I am wondering the same thing myself.

Mr. Holland: I would like to try it some time.

The Court: You would be sorry.

Q. (By Mr. Holland): Mr. Bransome, my questions will be confined to the period 1938 to 1949, unless otherwise specified. Now, in 1938, on July 1st, 1938, what position did you occupy with Vanadium Corporation of America?

A. I was president.

Q. How long did you remain as president?

A. Until 1949, when I became the president of the Mack Truck Company.

Q. And since 1949 you have not been connected with the Vanadium Corporation?

A. Not in any way, through stock ownership, association, or anything.

Q. Pension or anything else?

(Testimony of Edwin D. Bransome.)

A. Yes, I will get a pension from Mack as a contributor to the pension.

Q. From Mack, you say?

A. From Vanadium, that I contributed during my stay with Vanadium. I haven't gotten any yet, though.

The Court: That would help in retirement.

The Witness: It certainly will.

Q. (By Mr. Holland): I am not going to ask any general questions, Mr. Bransome. I will simply confine myself to certain testimony that has been given at this trial.

Mr. Burwell—do you know Mr. Burwell?

A. Yes, sir.

Q. And you knew he was connected with you at Vanadium? A. Yes, sir.

Q. —testified that in 1940, shortly before the Naturita plant opened, he had a meeting with Mr. Van Fleet and yourself at which an agreement was made between the companies as to what price would be paid to the miners for ore on the Colorado Plateau, that price being 21 cents for two percent ore.

Was there any such agreement?

A. There was never any such agreement.

Q. Was there any conversation between you respecting the price to be paid miners for ore?

A. There was a lot of conversation within our organization, and the policy that I established was that we were not to get into any price war with an outfit that was already established in that district, whereas we had to refurbish complete a mill, go

(Testimony of Edwin D. Bransome.)

out and get claims in the wilds—and I assure you they were the wilds—to locate claims and develop those claims in order to feed that mill.

So my policy was to Mr. Kett, "Don't start any price [2073] war."

Q. Mr. Burwell testified that in 1942, I believe in May or June of 1942, he had a meeting with you in Dove Creek, Colorado, at which were present Mr. Kett, yourself and himself—

A. Who was it who said that?

Q. Mr. Burwell. A. Yes.

Q. And possibly John Hill, and at that meeting you pounded on the table and said, "Mr. Burwell, I am going to pay 31 cents for ore whether you like it or not," and he said, "I will go along with that."

Did any such meeting take place?

A. No such meeting ever took place. I never saw Mr. Burwell in Dove Creek. The report may have gotten out that I said I would pay any price I wanted for ore regardless of anything, if it was necessary to pay such prices to get the ore and keep our mills for the defense effort.

Q. But you had no such meeting in Dove Creek with Mr. Burwell? A. No, sir.

Q. There is further testimony which I wish to go into in some detail. First of all, in 1941, in June of 1941, Mr. Leir has testified that at a meeting in Washington in some government office you made the statement that you did not foresee any necessity

(Testimony of Edwin D. Bransome.)

of vanadium. Do you recall the meeting and did you make any such statement?

A. I recall the meeting. I was not representing Vanadium Corporation. I was working for the government and I was representing industry in this country and advising Mr. Sidney Hillman and General Newsome. I walked over from my office to that meeting. The statement, or any statement to the effect that I said there was an adequate supply just can't be so, because a year prior to that I had engaged in meetings with the Army and Navy Munitions Board and I am certain that the Carbide people did so, too, because it covered all alloys, and they designated vanadium sales and other alloys on the strategic and the critical materials list, so that to make a statement almost a year afterwards that there was an adequate supply is, on the face of it, ridiculous.

Q. And you made no such statement, is that correct?

A. I made no such statement.

Q. As a matter of fact, after vanadium ore was put on the critical list, were you instrumental in stopping shipments of vanadium to certain potential enemy countries?

A. Definitely. I caused an embargo to be placed on—I don't know whether you can say an embargo, but I caused licenses to be placed on shipments of all vanadium going out of this country, because I was quite sure that it was going into the hands of potential enemies of this country. [2074]

(Testimony of Edwin D. Bransome.)

Before that time, I had sent letters to the State Department telling them, and I did keep him advised of all inquiries that were considered that were large enough, if they were fulfilled, if they grew into orders—if they were large enough so that they grew into orders—to become dangerous to this country, and to come back to us in the form of shells or anything else.

Mr. Holland: In that connection I offer in evidence these two documents.

(Documents handed to Mr. Alioto.)

Mr. Holland: No objection?

Mr. Alioto: Let me see the other one first, please. We have no objection.

Mr. Holland: We offer them as defendants' Exhibits next in order.

(The documents referred to were thereupon received in evidence and marked Defendant V's Exhibit 2-P.)

Mr. Holland: The first of these documents is a memorandum in the State Department, subject "Vanadium Directive No. 86," signed by J. S. Bates, Major O.D. Res., whatever that means.

"Memorandum for Files:

"Mr. Edwin D. Bransome, President of the Vanadium Corporation of America (who is also a member of the Advisory Commission to the Council of National Defense) called on me today to discuss the control of export of vanadium as defined in the President's Proclamation of July 2, 1940, and the regulations thereunder."

(Testimony of Edwin D. Bransome.)

Q. Now, the Proclamation of July 2, 1940, was the proclamation that put vanadium on the critical list, is that correct, Mr. Bransome?

A. I think that was it. I can't recall the exact date.

Mr. Holland: "Mr. Bransome showed me several inquiries for substantial amounts of vanadium in the form of ferro-vanadium for shipment to Roumania and Russia. He was very emphatic in his opinion that these inquiries represented an entirely unsatisfactory disposition of the vanadium involved and in spite of the fact that his company stood to lose attractively priced business, he made strong recommendations that steps be taken to deny licenses for export of vanadium as represented by the inquiries referred to above.

"Directive No. 86 is the result of discussion of this matter in this office."

The Court: What is the date of that?

Mr. Holland: That is August 28th, 1940. And on August 27th, 1940, Directive No. 86 was issued by the [2076] State Department.

"Memorandum for Chief, Division of Controls, Department of State:

"Subject: Export of Vanadium to Germany, Japan and U.S.S.R.

"1. After consideration of information available in this office, it is decided to deny until further notice the issue of licenses for the export of:

"Vanadium — vanadium ores and concentrates; alloys containing in excess of 10 percent vanadium,

(Testimony of Edwin D. Bransome.)

and vanadium compounds, to Germany, Japan and the U.S.S.R.

"2. This action will be understood as applying to any territories actually occupied by the military forces of the powers named.

"3. Should any cases arise involving other territories considered by the Department of State as under the military domination of the powers named, specific instructions will be requested.

"By direction of the President: R. L. Maxwell, Lieutenant-Colonel (O.D.), Chief, Division S.C. Administrator."

Q. Now, Mr. Bransome, Mr. Burwell has given two versions of an alleged conversation he had with you in December of 1947 or January of 1948 regarding the coming production of [2077] uranium in this country, and the question of the handling of vanadium in connection with such production.

I would like to read you the two versions, the first of which is his statement from the stand, and the second of which is a letter he produced which he stated he had written to a man named Keiser of the Atomic Energy Commission.

Mr. Alioto: If your Honor please, we object to counsel's statement of two versions here.

The Court: Well, it is preliminary.

Mr. Alioto: It is argumentative, too. It is purely argumentative.

The Court: It is not argumentative.

Mr. Holland: I explained why I am doing both.

(Testimony of Edwin D. Bransome.)

The Court: Let us get along with this case. Let us cut out this maneuvering and get on with our business.

Mr. Alioto: Our objection was for the record.

The Court: You are the one who is making the argument now.

Mr. Alioto: My objection is that counsel's statement of two versions is argumentative, and I would respectfully move the Court under authority I think I have to strike the question.

The Court: The Court holds it is not argumentative.

Mr. Alioto: To strike the reference and ask the Jury to disregard it.

The Court: Overruled—overruled.

Go ahead with the question.

Q. (By Mr. Holland): First of all, Mr. Burwell was asked about whether he had a meeting with you in December of 1947 or January of 1948 and he said yes.

"Q. Where do you recall that meeting was held?

"A. At the office of the Vanadium Corporation in New York.

"Q. Who was present at that meeting?

"A. Mr. Bransome.

"Q. And yourself?

"A. That is right.

"Q. Nobody else?

"A. That's right."

Now, Mr. Bransome, did you on or about this time

(Testimony of Edwin D. Bransome.)

have any meeting in your office in the Vanadium Corporation?

A. What was that date?

Q. December 1947 or January 1948.

A. No, sir. What is more, I don't remember Mr. Burwell ever being in my office.

Q. Then asked for the substance of the conversation, Mr. Burwell testified as follows:

"I told Mr. Bransome that we had been—I had been concerned with the problem of uranium production for the atomic period we were entering, that we had prepared—that I had prepared a proposal for the building of a central plant on the Colorado Plateau near Naturita which would have a capacity of from 500 to a thousand tons per day, and I had directed and designed with the Manhattan District's pilot plant operations conducted in 1943 a process study, assisted by Union Carbide, which was a plant design."

Do you recall any such conversation with Mr. Burwell?

A. I never heard of the mill, never heard of any such process.

The Court: Did you have the conversation?

A. No, sir.

Q. (By Mr. Holland): "This plant was designed to recover the uranium first using a soda ash leaching process, the same process practically that Naturita is using today, and that the vanadium that was in the ore would be held as a residue to be marketed with or in proportion with vanadium

(Testimony of Edwin D. Bransome.)

markets, and that the respect this proposal had been made was that we would not hold back the production of uranium by forcing it to come through plants that processed for vanadium first and then for uranium, which was limiting uranium production, that this plant had [2080] been designed and prepared for the objective of meeting the future needs of the Colorado Plateau.

"This plan I discussed with Ted Bransome. I told him that I had previously talked with Mr. Marcus Hurst who was President then and is President now of the Molybdenum Corporation of America, that I had recommended to the Atomic Energy Commission, that I had recommended to the Union Carbide Company that the Molybdenum Corporation of America be given the operation of this plant independent of the Vanadium Corporation of America, of the U. S. Vanadium Corporation, in order that these warring differences and disputes over the vanadium market could be eliminated in the future, and that this plant had cost the government, the United States Government, approximately \$400,000 for pilot planting in Grand Junction, Colorado, that it was fully developed, that it was the plan for the future, that General Groves and the Manhattan District had approved this plan as one means of continuing without the ups and downs in harnessing of this region in the two-way vanadium market, and the finagling that was going on with those questions that you have heard in this court."

(Testimony of Edwin D. Bransome.)

Do you recall any such statement from Mr. Burwell? A. No, sir. [2081]

Q. Either in your office or anywhere else?

A. No, sir.

Q. "Mr. Bransome questioned me about this plan in some detail. I told them that Mr. Hurst did not feel at the moment that he wanted to get into the picture unless everybody would agree that an independent alloy producer or operator was mutually desirable. I do not think Mr. Hurst was very warm to the proposal, anyway.

"Mr. Bransome said, 'I suppose these independent producers of ore had vanadium and uranium ore and brought their ore up to this central plant that you propose. The vanadium then would be turned back to them to sell or to dispose of, isn't that correct?'

"I said, 'Yes, that is correct.'"

Did any such conversation take place?

A. No, sir.

Q. Either in your office or elsewhere?

A. No, sir.

Q. "We cannot in this particular emergency deny any person the right to get his vanadium back," that this situation had now become bigger than either the Union Carbide or the Vanadium Corporation of America in my estimation.

"Then he asked this"—that is you—"What would happen if somebody like Continental Ore or Mr. Leir shipped some ore to this central plant? Would he get the vanadium back?"

(Testimony of Edwin D. Bransome.)

"I said, 'Surely, he would'."

Did you make any such statement, Mr. Bransome? A. No, sir.

The Court: What is your answer?

A. No, sir.

Mr. Holland: "So would anybody else who owned the ore. They would all have to have the same right.

"Mr. Bransome said, he paced back and forth in his office, he said, "That would put Mr. Leir in the vanadium business and that is what we are trying to keep him out of'."

Q. Did you ever make any such statement?

A. I never made any such statement.

Q. "And I looked at Ted and I turned around and walked out of the door."

A. No, sir.

Q. Now, in the letter which Mr. Burwell testified he wrote to Mr. Keiser, which letter is dated January 22, 1948, Mr. Burwell makes the following statement—

Mr. Alioto: Will you identify Mr. Keiser, please, Mr. Holland? [2083]

Mr. Holland: Mr. Keiser is with the Atomic Energy Commission. I have already identified him as being with them.

"In the main there does not seem to be much question as to the engineering approach to the problem of processing the carnotite ores, but most of the questions revolve about the disposal of excess vanadium. In this connection I had an inter-

(Testimony of Edwin D. Bransome.)

esting talk with Ted Bransome, as a result of a casual meeting which developed a brief discussion of the Western situation."

Q. Now, did you, from time to time, have casual meetings with Mr. Burwell in New York?

A. I don't think I had them so much in New York. I may have seen him a couple of times. Well, I met him in Washington at meetings of the Vanadium Division. I met him in Manhattan Project on meetings. I don't think he was in many Atomic Energy meetings, but I did meet him in Washington and in New York and in the West, sometimes in meetings, sometimes casually.

Q. Did you ever have a brief discussion of the Western situation with him at those meetings that you recall?

A. No, sir, I don't recall many such meetings because the year prior to that almost I had told the Atomic Energy Commission that if they wanted to get uranium, they would have to build X number of mills—I can't give you the definite [2084] figures because they are classified—X number of mills to produce ore carrying certain grades of the uranium, but unfortunately they also contained vanadium. In order to make it economically possible for the miners to sell that ore and live, they would have to get \$7.00 a ton or something on that order—I may be a little wrong on the uranium content, but for the uranium content, in the order of seven or eight dollars. They would have to be paid for the vanadium at 30 cents a pound, or whatever

(Testimony of Edwin D. Bransome.)

the order was at the time, 20 to 30 cents—call it 30—they would have to be paid \$12 or 40 pounds times 30 cents, \$12, which would give them 18 or 19 dollars a ton. That would have to be given the miners in order for them to live, in order for them to make it attractive, for them to mine or and deliver it to mills.

Now, as far as the mills were concerned, the mills on carnotite and roscoelite ores, which were in the main in that district, had to carry or did carry vanadium far in excess of the uranium. It was in the order of two percent vanadium and one-tenth of one percent of uranium. Now, it cost the miller just as much to get that out, and so the miller would have to be paid in effect for the vanadium and the uranium, too, because it was put in solution just the same as you put sugar in tea and stir that up and put it in solution. Unless you put sugar and bicarbonate of soda [2085] in it at the same time, when it wouldn't be very attractive as tea, but you would put those in, they go in solution, they come so far through the process, and they were leached in roasters as big as this room and several stories high. They went through that and then they were quenched in a great whirling pool of water. They were dropped out in there and that went into solution.

Now, they leached the rest of it in tanks of sand that were a quarter as big as this room, and that leaching process went through—that was a water leach, and that took out the rest of it, but it put

(Testimony of Edwin D. Bransome.)

it into solution, and that went on through to a point, and when it got to the last point there it divided, you knocked it down, you used some reagent, the same as you could in tea if you found out what could precipitate sugar, what would bring the sugar down.

That went one way, the sugar came down, and the solution went another way, and the vanadium was precipitated from that. One came out in what was called the yellow cake, the other came out in what was called black cake. The miller would have to be paid for both of those before he ran a mill. They had the same experience with their own mills that they ran. When they did that, and I told the Atomic Energy Commission that they would have to pay for all of that, and then they could do with the vanadium as they pleased—excuse me—I almost talked about the number of mills and I don't want to. [2086]

But the number of mills constructed would glut the market, as far as any market was concerned, and they let the vanadium fall where it may. I believe I used that expression, that no matter what happened to the vanadium, let her go. I never said to keep anybody out of business.

Does that answer your question?

Q. That answers my question.

The Court: Did you ever, at any time, make a statement to Mr. Burwell that you wanted to keep the Continental Ore out of the vanadium business?

A. No, sir.

(Testimony of Edwin D. Bransome.)

Q. Did you ever learn of any such statement by any officer of your corporation?

A. No, sir, I never heard any officer of my corporation make such a statement.

Q. (By Mr. Holland): Mr. Bransome, there has been some testimony here about the fact that the Vanadium Corporation in the fall of 1941 attempted to purchase the claims on which Blanding Mines was operating—

A. Will you start that again, please?

Q. I say, there has been some testimony in the case to the effect that in the fall of 1941 the Vanadium Corporation wished to acquire some claims on which Blanding Mines was operating in the Cottonwood area and approached Blanding to buy these claims and was told by Blanding that they did not own them, and that Vanadium Corporation would have to take the matter up with Mr. Garbutt, is that correct? A. Yes, sir.

Q. Did Vanadium Corporation later take that matter up with Mr. Garbutt to purchase those claims from him?

A. Yes, sir, I did.

Q. Why did you purchase those claims?

A. For the sole purpose of supplying ore to the Monticello mill, which was built solely and only for the purpose of supplying vanadium pentoxide for use for the war effort.

Q. Were those claims within an area which was tributary to the Monticello plant?

A. Oh, definitely. Blanding was just down the

(Testimony of Edwin D. Bransome.)

line from us. I don't know what it was. Maybe it was 25 or 26 miles, on, as Kett said, a practically downhill haul. That was good. As a matter of fact, the government I think asked Mr. Garbutt and certainly told us about these claims, too.

Q. Mr. Bransome, have you at any time on behalf of Vanadium Corporation or in your own behalf or in any way made any agreement with anyone connected with Union Carbide organization regarding the division of the vanadium market?

A. No, sir. [2088]

Q. Have you at any time ever made an agreement with anyone at Union Carbide respecting the price at which oxide or ferro-vanadium would be sold?

A. No, sir.

Q. Or the price at which ore would be purchased from miners?

A. No, sir.

Q. Have you ever made any agreement with anyone at Union Carbide, or anyone else, under which it was contemplated that anybody would be eliminated from the vanadium business or kept out of the vanadium business?

A. Definitely not.

Mr. Holland: That is all.

• Cross-Examination

Q. (By Mr. Alioto): Mr. Bransome, when did you join the Vanadium Corporation of America?

A. Mr. Alioto, I've got rheumatoid arthritis. Do you mind if I stand up for just a moment and stretch?

(Testimony of Edwin D. Bransome.)

Q. I have no objection at all.

A. Excuse me. This weather—I love San Francisco, but this weather has got me down.

The Court: Where do you live?

The Witness: In New Jersey—which is just about the same. [2089]

Q. (By Mr. Alioto): Mr. Bransome, when did you join the Vanadium Corporation of America, sir?

A. I believe it was in 1949, in the fall. Wait—I beg your pardon—that was Mack Truck. It was in 1935, I believe.

Q. And your first job with that company was to be its president?

A. That's right.

Q. And prior to that time you had been with a company known as the Air Reduction Company, had you not? A. That's right.

Q. And the Air Reduction Company was a substantial bond holder of Vanadium Corporation of America, was it not?

A. Yes, it was. It bought—that was not beforehand. I sold a company to the Air Reduction Company and that was long before 1938, however.

Mr. Holland: If the Court please, it seems we are getting back again.

Mr. Alioto: We are not getting back. I am simply establishing the fact that he came from the Air Reduction Company; that is all.

Q. The Air Reduction Company was in existence from 1938 to 1949, wasn't it?

(Testimony of Edwin D. Bransome.)

A. Yes, sir.

Q. And during that period of time——

A. I wasn't with them.

Q. And during that period of time was a very substantial producer of the same things that Union Carbide Carbon Division produced, was it not?

A. Yes, I think so.

Q. The two of them were the largest in their fields, were they not? A. Yes, sir.

Q. Union Carbide and Air Reduction.

A. Yes, sir.

Q. Did you retain any connection with the Air Reduction Company after you joined the Vanadium Corporation of America?

A. No, sir.

Q. What had——

A. I was connected with Air Reduction Company in electric welding, nothing else. I had sold a company to them and they insisted I come along with them, and that was the electric welding, and that was the only connection I had with them.

Q. I take it since you started as president directly, the Air Reduction Company, of course, agreed that you might go to the Vanadium Corporation of America as its president.

Mr. Holland: If the Court please, this is all pre-'38 and——

Mr. Alioto: This company was in existence—— Air Reduction was in existence from '38 to '49.

Mr. Holland: What difference does it make?

Mr. Alioto: In view of the——

(Testimony of Edwin D. Bransome.)

The Court: No, you can't go back of '38. Now—

Mr. Alioto: If your Honor please—

The Court: You can ask him any condition that existed in 1938. That's when your client came to this country.

Mr. Alioto: I am simply asking whether the Air Reduction Company, which was in existence in 1938, was responsible for his going over to the Vanadium Corporation of America.

Mr. Holland: In 1935.

Mr. Alioto: Yes, in 1935.

The Court: No, you can't answer it.

Mr. Alioto: All right, your Honor.

Mr. Holland: We'll gladly go into it.

Mr. Alioto: You will gladly go into it, but you object.

Q. Now, Mr. Bransome, have you ever made any joint marketing arrangements with Union Carbide Group on vanadium? A. No, sir.

Q. How about shipments to France in 1939?

A. I don't think we ever made that arrangement. I think Electro Chimie ordered vanadium from Union Carbide and ourselves and it was a question of how much could be spared. There was no joint meeting. It was a shipment to France.

Q. You mean they ordered it separately from you and then ordered it separately from Union Carbide? Is that the way it worked out?

A. I don't remember. We were their agents—

Q. Surely.

A. —in this country, of Electro Chimie, and

(Testimony of Edwin D. Bransome.)

they may have gone through us, as they would through—in any business.

Q. Don't you recall specifically that they did go through you and that you and Mr. Sneath——

A. Why, I can't remember——

Q. That you and Mr. Sneath of Electromet made a deal to split the French order in '39 and '40?

A. No, I never made any such deal to split any order. I followed out the instructions of Electro Chimie, our agent—now, you can put anything you want on it, but that is what actually occurred.

Q. Now, Mr. Bransome, may I show you first a telegram dated October 4, 1939, from Jaoul of Electro Chimie?

A. The name is Jaoul (Sjah-oohl).

Q. Forgive my pronunciation — Jaoul — dated October 4, 1939. Will you be good enough to read that, please, Mr. Bransome, and I will ask you, after you have read it, to state for the record whether that is a document which you received at that time. [2093]

A. (Examining.) Why, certainly. It's merely instructions for us to take care of something for them in this country.

Mr. Alioto: We will offer this in evidence, if your Honor please.

Mr. Holland: We have no objection.

Mr. Archer: I take it you are offering that only against Vanadium Corporation.

(Testimony of Edwin D. Bransome.)

Mr. Alioto: Yes, as of this time, on the assumption——

Mr. Holland: Let me see it just a second——

Mr. Alioto: ——

The Witness: May I read that again, sir?

Mr. Alioto: Yes, sir. I was going to read it out loud to the jury.

The Witness: That's fine. Thanks.

Mr. Alioto: We will read these documents and you will have an opportunity——

The Witness: Just so there is no misunderstanding.

Mr. Alioto: You will have an opportunity to say anything about it any time you want, sir.

(Telegram 10/4/39, Jaoul Electro Chimie to Bransome, received as Plaintiffs' Exhibit 161.)

Mr. Alioto: This exhibit, which is a telegram, October 4 of 1939, L. C. Bransome of Vancoram——

I take it Vancoram is a cable address for the Vanadium Corporation of America?

A. Correct.

Mr. Alioto: "New York, care of Vanadium Corporation of America."

"Further your cable twenty-seventh. Stop. Being London last week have received proposal from representatives Union Carbide for one hundred twenty thousand pounds vanadium pentoxide. Stop. Would you arrange in accord with Sneath to secure firm that quantity shipment October November. Stop. Are now arranging credit. Stop. Kindly cable confirmation.

"Jaoul Electrochimie."

(Testimony of Edwin D. Bransome.)

Q. Now, Mr. Bransome, the "Sneath" referred to here is the Mr. Sneath of the Union Carbide group or Electro Metallurgical Company?

A. That's right.

Q. And Mr. Sneath was kind of their representative on European business, was he not?

A. I don't know what Mr. Sneath was.

Q. Did you, pursuant to this telegram, then contact Mr. Sneath and work out an arrangement?

A. Yes.

Q. And that—

A. That telegram states in there that—it doesn't state that we are their agents, but we are—we were their agents in this country. They said: "Will you please go out and get 120,000 pounds from Union Carbide?" It could have been just as well Jimmie Jones—"and take care of all the shipping and so on and we will arrange credit for it."

Q. You mean that you had the power at that time to—

A. We, as agents.

Q. Yes, I understand you were agents. That is the part of the thing we are after here. And you had the power at that time to get the vanadium pentoxide from anybody else; you didn't have to get it, I take it, from Electro Metallurgical Company?

A. No. It says in there that they had received an offer of 120,000 pounds from Union Carbide.

Q. Yes.

A. I had nothing to do with what they wanted. They had an offer, a bid, a tender of 120,000 pounds

(Testimony of Edwin D. Bransome.)

from Union Carbide. They said, "It's O.K. with us; we will arrange credit for it. Will you please go ahead and take care of the detail"—because they had no office here in New York or in this country.

Q. Oh——

The Court: Were you acting as their agent at that time?

The Witness: Yes, sir.

Q. (By Mr. Alioto): And this was one of the large French ferro-vanadium companies, was it not?

A. Well, it was a ferro—they sold ferro-vanadium, and they made ferro-vanadium.

Q. Was it the largest company in France?

A. Oh, not by any chance.

Q. What were the other companies producing?

A. I don't know, but the Electro-Chimie was not a very large company.

Q. I show you——

A. It's the same as Vanadium—neither is Vanadium a very large company, nor was it then.

Q. I show you next, Mr. Bransome, a letter from the Electro Metallurgical Sales Corporation to your company, addressed to Mr. P. J. Gibbons, Secretary and Treasurer. I take it Mr. Gibbons was the Secretary and Treasurer in November of 1939?

A. Mr. Gibbons was that as long as time lasted, according to my memory.

Q. Yes.

(Testimony of Edwin D. Bransome.)

A. (Witness examining document.) Yes. I don't remember that at all, but I will accept it.

Q. But your company received that letter, did it not?

A. Well, it was written, and I assume it was received. Let's assume it was received.

Mr. Alioto: We will offer it into evidence as plaintiff's exhibit next in order, in connection with this export transaction in '39.

Mr. Holland: We don't think this has anything to do with this lawsuit, your Honor.

Mr. Alioto: It shows the combination between—

Mr. Holland: A transaction of shipping some stuff to France.

Mr. Alioto: We will get in just a minute the rest of it in here.

The Court: Go ahead and let it be admitted.

(Letter 11/3/39, Electro Metallurgical Sales to V.C.A. received as Plaintiffs' Exhibit 162.)

[See Book of Exhibits.]

Mr. Alioto: There are about three or four letters on that and then we will complete this transaction, if your Honor please.

The telegram was dated in October of '39. This is dated in November 3, 1939. It is from the Electro Metallurgical Sales Corporation of Union Carbide to the Vanadium Corporation of America:

"Gentlemen:

"As per our telephone conversation of today, we now have available the second consignment of Fused Vanadium Oxide for France.

(Testimony of Edwin D. Bransome.)

"The gross weight of the consignment is 53,830 pounds, or 51,585 pounds of Fused Vanadium Oxide net, [2098] which is equivalent to 44,999.54 pounds of Vanadium Pentoxide. This, at a value of \$1.30 per pound of contained V₂O₅ equals \$58,499.40. Adding to this the marine freight, consular fees, consular blanks, and marine insurance charges, we arrive at a c.i.f. Le Havre value of \$59,463.20.

"As we understand the freight rate is to be increased on November 13th we suggest that you urge them to cable their credits promptly, enabling booking of the shipment prior to that date; otherwise, their credits must be increased.

"Very truly yours,

"Electro Metallurgical Sales Corporation,

"J. F. Widman, Export Department."

Q. Now, do you recall that you made this shipment to the French at \$1.30 per pound?

A. I don't remember \$1.30 now.

Q. Wasn't this about 40c under the export market at the time?

The Court: How does that have anything to do with this lawsuit?

Mr. Alioto: I think it has a lot to do with this lawsuit, if your Honor please. We will demonstrate in just a moment. Let us develop the story. I think it will appeal to your Honor after we get it developed. [2099]

A. I don't remember whether this is 30c below the export price.

(Testimony of Edwin D. Bransome.)

Q. Didn't you sell to the French regularly at a certain amount of money below the export price?

A. I don't—no. We sold the French ore, we sold them oxide, and we sold them various amounts. I can't recall the prices at which we sold them.

Q. I show you next a cablegram from you to Trochim in Paris. Maybe my pronunciation is bad on that, too. It is dated November 8, 1939. Would you be good enough to identify the addressee of that? Who is Trochim?

A. Trochim? I don't know; it is probably a cable address. (Witness examining.) I guess it is a telegram sent by Vancoram.

Q. Vancoram is the Vanadium Corporation of America? A. Yes.

Mr. Alioto: We will offer this in evidence as plaintiff's exhibit next in order in this series.

Mr. Archer: Again, that is being offered only against the Vanadium Corporation at this time?

Mr. Alioto: Yes.

Mr. Holland: I don't understand it, but if you want the letter in—

(Cablegram 11/8/39, Vancoram to Trochim, received in evidence as Plaintiff's Exhibit 163.)

Mr. Alioto: This cablegram on November 8, 1939, reads as follows: It is from the Vanadium Corporation of America to Trochim in Paris.

"Two additional lots pentoxide prepared for shipment. Step/ First lot gross fifty-two seven eighty-eight net forty-nine six eighty contained pentoxide forty-five thousand value fifty-nine thou-

(Testimony of Edwin D. Bransome.)

sand four hundred eight-seven dollars credit account Vancoram, second lot gross fifty-three eight hundred thirty net fifty-one five hundred eighty-five contained forty-five thousand value fifty-nine thousand four hundred sixty-four dollars credit account Electro Metallurgical Sales Corporation. Stop. Includes all charges except war risk insurance. Stop. Recommend credits be arranged earliest possible date, understand freight rate increase November thirteenth. Send paid."

Q. Now, do you recall that there was an additional order in November of 1939 which was split, as the cable indicates, between you and Electro Metallurgical?

A. I don't recall that at all, but I am willing to say that we took care of it on the same basis as we took the other.

Q. You were the man that negotiated this with Mr. Sneath, weren't you, Mr. Bransome?

A. I don't believe it was necessary for me to negotiate [2101] that at all. Anybody in our outfit could have done that.

Q. Regardless of who in your outfit did it, whether it was you—

A. It wasn't with Mr. Sneath. When that first telegram, whenever it was, mentions Sneath's name, it was just a matter—this is just a formal matter of business. When they came over to us—when they sent this offer to us, they said: "Please arrange to get it." We got it for them, and that was it. Now, anybody could have done it.

(Testimony of Edwin D. Bransome.)

Q. Now, the price that you arranged with Electro Metallurgical Company was the same price that you were charging the French, wasn't it?

A. I don't know.

Q. \$1.30 a pound.

A. I don't recall. It probably was.

Q. So that in your discussions with Electro Metallurgical Company you had to discuss a price at which you would ship to the French in export; isn't that a fact?

A. I beg your pardon?

Q. Necessarily you had to discuss with the Electro Metallurgical Company the price at which this export shipment would be made.

A. We had to ask them what their price was.

Q. And you had to negotiate it with them.

A. We did not have to negotiate it. They made their own [2102] prices. We never made any prices for Union Carbide or Electro Met or anybody else. We never made their prices for them. Sometimes we might have followed them; sometimes they might have followed us, which is done every day in business.

Q. Now let me show you a letter from a man in your organization who signs simply as "G.", Secretary-Treasurer, to Mr. Andre Jaoul—let me have that pronounced again.

A. Jaoul.

Q. To Mr. Andre Jaoul, dated November 9, 1939, addressed to Societe d'Electro Chimie in Paris.

1890 *Continental Ore Company, et al., vs.*

(Testimony of Edwin D. Bransome.)

I take it that "G" on that letter is Mr. Gibbons, is that correct?

A. (Witness examining.) "Secretary and Treasurer"—it certainly must have been. It looks like his initial.

Q. That confirms certain cables and then adds one paragraph.

A. You want me to read it?

Q. Is that Mr. Gibbons' initial there?

A. I don't know; you will have to ask Mr. Gibbons that, if that is his initial. I don't know.

Mr. Alioto: Mr. Holland, can we stipulate that the Secretary-Treasurer of Vanadium Corporation November 9, 1939, was Mr. Gibbons?

Mr. Holland: Let me look at it first (examining). I assume. Let me show that to Mr. Gibbons.

(Exchange between Mr. Holland and Mr. Gibbons.)

Mr. Holland: Is that your initial?

Mr. Gibbons: Yes.

Mr. Holland: Yes, Mr. Alioto.

Mr. Alioto: Thank you, Mr. Holland.

It sets forth certain of these cables.

Mr. Holland: Have you offered it in evidence yet?

Mr. Alioto: We will offer it.

Mr. Holland: We have no objection.

Mr. Archer: As against Vanadium Corporation only, I take it?

Mr. Alioto: At this point, yes.

(Testimony of Edwin D. Bransome.)

(Letter, V.C.A. to Societe d'Electro Chimie, 11/9/39, received in evidence as Plaintiff's Exhibit 164.)

Mr. Alioto: November 9, 1939, Mr. Gibbons writes to the French company, Societe d'Electro Chimie:

"Gentlemen:

"In connection with your cable of October 10, 1939, confirming your needs of pentoxide contained in the amount of 150,000 lbs. contained, we cabled you as follows:"

Then follows cables, one of which was read.

"As you will note from the above cables, we now have prepared and ready for shipment in our warehouse 75,000 lbs. of contained pentoxide and Electro Metallurgical Sales Corporation have the same amount prepared and in their warehouse ready for shipment.

"We were rather disappointed that the credit for the first 30,000 lot, which you advised on October 24th should be forthcoming within the week, did not come to hand and thus enable us to get this first lot off during the month of October. As we advised in the cable of November 8th, our information is that freight rates will be increased on or about November 13th. If this should take place, it will be necessary to have additional credit arranged to take care of the increased freight rate. We trust, however, that in accordance with our recommendation in our cable of November 8th, that permits and credits will be forthcoming in time for us to take

1892 *Continental Ore Company, et al., vs.*

(Testimony of Edwin D. Bransome.)

advantage of the present rates in obtaining shipping space.

"We would appreciate everything that may be done to rush the required credits in order to release the 150,000 pounds of contained pentoxide which we and the Electro Metallurgical Sales Corporation have ready and jointly holding earmarked for you."

Next is a telegram from you, Mr. Bransome, to Painvin dated December 14, 1939.

Would you be good enough to examine that document and state if that is the cablegram sent you, and then if you would also be good enough to identify the name Painvin for us—if that is the right pronunciation?

A. Your French is getting much better.

Q. Yes, it is.

A. (Witness examining.) I don't remember the telegram, Mr. Alioto, but I am willing to assume that it was sent.

Q. Well, we received in connection with certain pre-trial discovery this, so I assume there is no question, then, about authenticity.

We will offer this cable into evidence as the plaintiff's exhibit next in order.

Mr. Archer: That is just against the Vanadium Corporation?

Mr. Holland: No objection.

(Cable, December 14, 1939, Vancoram-Bransome to Painvin-Trochim; received in evidence and marked Plaintiff's Exhibit 165.)

(Testimony of Edwin D. Bransome.)

Q. (By Mr. Alioto): About this time, Mr. Bransome, weren't you engaged in activities to control these exports to the extent that third parties wouldn't be exporting but just you and Electro Metallurgical would be?

A. I beg your pardon?

Mr. Alioto: Read it.

(Pending question read back to reporter.)

The Witness: Definitely not. [2106]

Q. (By Mr. Alioto): You weren't trying to keep speculators from buying domestic and selling export, were you?

A. How could I?

Mr. Alioto: This cable reads—we will come to that in a moment—this cable reads:

December 14, 1939, Mr. Bransome to Mr. Painvin—

Q. Exactly who was Painvin?

A. Painvin was the President, I believe, or Managing Director, of Electro-Chimie in Paris.

Q. Did he have an office in your New York office?

A. No, sir.

Q. At any time?

A. No, sir.

Q. (Reading.)

"Your cable 10th arrange credit cover 400,000 pounds pentoxide—"

This is a new order, isn't it?

A. I don't know. You asking me?

Q. Yes.

A. I don't know whether it is or not.

Q. (Reading.)

(Testimony of Edwin D. Bransome.)

"Your cable 10th arrange credit cover 400,000 pounds pentoxide contained amount about 620,000 dollars. Stop. About 310,000 account each Electro Metallurgical Sales Corporation and Vancoram. Stop. 45,000 pounds pentoxide contained due to leave New York December 26th Steamship Adamus completing Vancoram portion first order."

Now, do you have any recollection of arranging in connection with this 400,000 pounds order to have Electro Metallurgical Company take half of it?

A. No, sir. But I assume it was done as an agent. Remember this, Mr. Alioto, that Electro-Chimie was also connected with Union Carbide.

Q. How?

A. In other directions.

Q. How?

A. Why, I don't know. They sold them patents or something like that and Union Carbide would get in touch with them and say, "We offer you so much vanadium." We were their agents; we took care of that business. And we never arranged for any prices that they would pay or anything.

The Court: Well, now, at this time, at this particular time, who were the producers of vanadium in America?

The Witness: In America, the Vanadium Corporation and the Union Carbide.

The Court: Were there any other sources from which you could supply that order then?

L

(Testimony of Edwin D. Bransome.)

The Witness: Oh, yes, we could have supplied that order from Peru. See, we had large—— [2108]

The Court: I am talking about in the United States.

The Witness: No, sir. But we could have supplied that order from Peru.

The Court: Yes. Well, now, were there any other producers of vanadium in the United States at that time except the two you mentioned?

The Witness: Not to my knowledge, no. No one that could have fulfilled any orders like that.

Q. (By Mr. Alioto): Weren't there a number of independent mills out in the Colorado Plateau at this time, Mr. Bransome?

A. No, sir. Not any of them that could have done anything like that.

Q. You mean none that could have produced 400,000 pounds?

A. No. And there wasn't any at that date. What date is that?

Q. December of 1939.

A. 1939—I don't think there was a mill on the Plateau running, with the exception of Uravan, and there may have been some little mill running some place, but I doubt that. I think Nisley and Wilson or somebody had a mill over near Gateway, because we helped them out with equipment and ore—and bought ore from them, and bought the little oxide they produced from them, but I don't know of any other mills that were running. [2109]

(Testimony of Edwin D. Bransome.)

Q. The record independently shows he was operating at that time, Mr. Bransome.

A. Well, it would. I would be interested in hearing what they were, because I don't recall it.

Q. Mr. Bransome, you were getting \$1.30 for this oxide that you were shipping to France, weren't you? A. That is right.

Q. And you were buying that oxide from the Vanadium Corporation or part of it at 80c. They sold it to you right in this period, 1939. Weren't you? A. Yes, I think they were.

Q. At this time the Apex Smelting Company had asked you for supplies of vanadium oxide, had they not, and you turned them down?

The Court: We will take a recess.

(Recess.)

Q. (By Mr. Alioto): Mr. Bransome, my associates called my attention to the fact that when I asked you just before the recess whether you were selling at \$1.30 and buying at 80c that I inadvertently said buying at 80c from the Vanadium Corporation of America. Of course, I meant buying it from the United States Vanadium Company, not the Vanadium Corporation of America. You were aware of the fact, were you not, in 1938 and 1939 you were buying supplies of oxide from the United States Vanadium Company? [2110]

A. I was not aware of that at all, Mr. Alioto.

Q. Didn't you know that in 1938 you bought 130,000 pounds of vanadium oxide from U.S.V. at 80c?

(Testimony of Edwin D. Bransome.)

A. I don't know whether that came from the Maggie C. or who.

Q. The Maggie C. is 1939 and 1940.

A. We bought V_2O_5 from U.S.V. when they had stored large supplies of it, and it was good business for them to get rid of it.

Q. But in any event, a while ago when I said the Vanadium Corporation of America, I meant you bought at 80c from U.S.V.

A. We didn't in 1939.

Q. 1938?

A. Now, which are you asking me about, Mr. Alioto, 1938 or 1939?

Q. The record shows I am asking now if you remember the quantity of 130,000 pounds in 1938.

A. I don't remember that quantity. I remember buying in large quantities from the U.S.V. when they had quite a few million pounds of V_2O_5 , and we had the sales organization that could sell it and they did not. So they thought it was good business to get rid of that inventory instead of having their money tied up in it. We bought it at that time. When the sales of vanadium started up, when demand for vanadium started [2111] up, they refused to sell us any more.

Q. You bought about 3,000,000 pounds from them under that arrangement?

A. I wouldn't be a bit surprised, because that was in effect when I came with the company.

Q. Mr. Bransome, at the time you were selling

(Testimony of Edwin D. Bransome.)

for \$1.30 to the French, the actual export price was \$1.70 for oxide, wasn't it, f.o.b. New York?

A. By whom?

Q. The general market price for oxide in export.

A. I don't know. I don't think we ever sold at \$1.50. What do you mean by "the general market price"? Are you talking about the Vanadium Corporation of America? I don't believe we ever sold oxide for \$1.70 in 1939.

Q. Isn't it a fact that at the end of 1939 and the beginning of 1940, when the export market went to \$1.70, the local market was at \$1.10, and that made a situation where an independent could purchase the oxide at \$1.10 and sell in export at \$1.70?

A. If the export demand was \$1.70 and any sharpshooters wanted to come in and get oxide at \$1.10, they could have made the intervening profit.

Q. And you engaged in activities to prevent that and stop it, didn't you?

A. I never engaged in any such activity at all. That is [2112] an imputation that just isn't so.

Q. I will show you a letter dated March 28, 1940, and ask you to look at the initials on that letter. It is a letter from you to Painvin, and state whether or not those are your initials at the bottom of that letter. Did you write that letter, sir?

A. I guess I did. Those are my initials.

Q. Are the facts therein stated true?

The Court: What is the question?

(Testimony of Edwin D. Bransome.)

Q. (By Mr. Alioto): Are the facts therein stated true?

A. I wrote the letter, and whatever is in the letter I presume to be true according to my belief. I don't know whether they are facts or not.

Mr. Alioto: I offer this,

Mr. Archer: That is against the Vanadium Corporation of America only?

Mr. Alioto: Yes.

Mr. Holland: No objection.

(The document referred to was thereupon received in evidence and marked Plaintiff's Exhibit 166.)

Q. (By Mr. Alioto): Mr. Bransome, isn't it your recollection now that Painvin or the Societe d'Electro-Chimie was not only the biggest ferro-vanadium producer then but is still today in France? [2113]

A. I think—yes, they may have been the biggest producer in France. I thought you said in Europe, on the Continent.

Mr. Alioto: This airmail letter with Mr. Bransome's initials on it, written out in his handwriting to Mr. G. J. Painvin, Societe d'Electro Chimie, 10, rue de General Foy, Paris, France:

"Your letter of February 19 finally arrived to-day, which is rather a record, I believe, in speedy transmission of the mails and, according to the marks on the envelope, it did not leave Paris until February 28. However, I assume these are neces-

(Testimony of Edwin D. Bransome.)

sary delays which none of us can complain of under the present circumstances.

"I am afraid that you have misunderstood my cables and letters in respect to the situation on V_2O_5 .

"At no time has the situation been easy in the supplying of either Ferro or Pentoxide. Up until the present date, we have been required, in order to keep our inventories up to a reasonable figure, to refuse to sell a great many people who have had firm orders in one hand and cash in the other and were willing to pay practically any price that we asked. As a matter of fact, for domestic consumption and what we did sell for export required us at one [2114] time to ship practically hot metal.

"Our position is a little better now, but one that would speedily be uncomfortable should one large order for Ferro or Pentoxide come in from abroad or from this country."

And then down below this following paragraph—
Mr. Holland: Read the whole letter.

Mr. Alioto: All right.

"As you probably know, we are in close touch with the Government on any Critical or Strategical materials and have assured them that we would not sell abroad any quantities of our alloys that might jeopardize the position of our country in the event of an emergency.

"In respect to some materials, the only way that we could supply them would be to have the raw materials shipped from abroad and have us process

(Testimony of Edwin D. Bransome.)

in transit, thus preserving our existing stocks of such raw materials. I can't say that I am entirely in sympathy with this procedure, but, nevertheless, it is there and must be observed.

"The prices for export are still the same, namely, \$3.70 per pound for Ferro and \$1.70 for Oxide. These prices make for people trying to buy domestic and sell export, but I am happy to say that we seem to have this phase under very good control and if any shipments do get away from us they are very small ones. The good part of this program is that as long as we can control our shipments, speculation by individuals is prevented and, as I said before, we are only selling to our regular domestic customers.

"I am taking up your time and going into detail on this as I want you to clearly understand that it is our desire to take care of you and your requirements of any materials we have in excess of domestic requirements if you will let us know as far in advance as possible and on the same basis as our last shipments provided the export price remains the same. In short, I cannot promise that we will be in a position to ship Ferro or Oxide within a short period of time if the request comes without warning.

"I feel certain that you will understand that I am not trying to build up any business for ourselves by alarming you as to the supply of Vanadium. If we had loosened up in our policy in selling certain brokers here, our supply of Vanadium

(Testimony of Edwin D. Bransome.)

would have been taken up for months to come and I think we are still in that position. [2116]

"So much for business.

"The news we get from your side of the water is so varied that even after a lengthy study and sifting of pseudo facts we are always in the state of bewilderment. It leaves us only with the hope that things go well with you and that we will receive favorable news.

"I hope this finds you well and that same applies to your entire family.

"With my very best regards to you and Jaoul, I am

"Sincerely,

"EDB."

Q. Now, Mr. Bransome, in that portion of this letter where you say that the prices were \$3.70 for ferro and \$1.70 for oxide, "these prices make for people trying to buy domestic and sell export, but I am happy to say that we seem to have this phase under very good control and if any shipments do get away from us they are very small ones." Now, what did you do to keep shipments from getting away from you?

A. Mr. Alioto, I am proud of that letter. That meant that we had millions and millions of pounds requested by brokers downtown in New York, and Mr. Viles or Mr. Laub can tell you he was on the telephone constantly all the time with people who had never been in the vanadium business, never owned a [2117] claim, never owned a mill, never

(Testimony of Edwin D. Bransome.)

had a thing to do with it, but at that time they saw a chance to make a dollar. Now, those were the people that I went to Washington and had licensed so that anybody who wanted to buy vanadium had to get the Government to approve that they really were sending that to the right people, and it wasn't long after that that that went into effect, and I was talking to them down in Washington at that time just about that sort of thing. If we had sold to the brokers that asked us and that had the cash in one hand, as I say, and an order in the other, we would not have had any vanadium for the use of the country or for France, that had its back to the wall at that time and was licked just a short time later and Paris fell. When they had orders with us, the French came to us and told us would we honor their orders, and we said forget it.

Q. Was the Continental Ore Company one of the companies you were trying to keep out of this export business?

A. The Continental Ore Company—I never heard of the Continental Ore Company to any extent or hardly at all. The sales department handled all those things. I never heard of Mr. Leir who is in this case. I never saw him but once in my life, and I don't think I heard of him but three or four times.

Q. I am asking you whether the Continental Ore Company was one of the companies that you were trying to keep out of the export business at this time. [2118]

1904 *Continental Ore Company, et al., vs.*

(Testimony of Edwin D. Bransome.)

The Court: What is the purpose of this line of questions?

Mr. Alioto: To show that the Continental Ore Company——

The Court: Is it your contention now that these people who had the ore were under any obligations to sell to a broker who could take that and make some money out of it?

Mr. Alioto: Within a month of this time the Apex Smelting Company made a demand for oxide and was turned down, and Apex Smelting Company was producing ferro-vanadium of a very fine quality.

The Court: Apex always had what they needed.

Mr. Alioto: That is not the evidence in the case.

The Court: That is your own testimony.

Mr. Alioto: No, I looked that up again last night.

The Court: Look it up again.

Mr. Alioto: I read it last night.

The Court: The statement of Mr. Leir himself.

Mr. Alioto: They tried to get it in March of 1940, the same month in which this letter was written, and they didn't get it. And I asked the witness, was Continental Ore Company one of the companies you meant to keep out of the export business?

The Court: He answered no.

The Witness: I said no.

Q. (By Mr. Alioto): Then you did not include

(Testimony of Edwin D. Bransome.)

the Continental Ore Company in the broker situation you described, is that it?

A. I didn't know anything about the Continental Ore Company. I don't know whether they were included or not. I don't know whether they were brokers. I didn't know them.

Q. Your letter states that the export price was \$1.70 f.o.b. New York. Well, it says \$1.70 for oxide. It doesn't say f.o.b. New York. But I call your attention to that paragraph. The last paragraph says the export price is \$1.70 for oxide and \$3.70 for ferro——

A. "The prices for export are still the same, namely, \$3.70 per pound for Ferro and \$1.70 for Oxide. These prices make for people trying to buy domestic and sell export."

Q. Yes.

A. In other words, we were trying to discourage them, and the way we discouraged them finally was to get the Government to make them get licenses before they could buy any vanadium and ship it abroad, and so to be sure it would go to the right people and not to our potential enemies.

Q. Yes. And didn't the Germans get a million pounds of oxide just before the outbreak of war from the Metallurgical Company?

A. What is that?

Q. Didn't the Germans get a million pounds of oxide from [2120] the Metallurgical Company just before the outbreak of war?

A. Are you asking me——

(Testimony of Edwin D. Bransome.)

Q. Yes.

A. Are you imputing that I sold the Germans a million pounds?

Q. Do you know?

A. Wait a minute. You just said that I sold it, didn't you?

Q. The record shows Electro Metallurgical Company. I didn't say you.

A. Then why bring it in when you are talking to me? If you are impugning my patriotism, let us do it definitely.

Q. I am not impugning your patriotism. You just made a statement about where this oxide was going.

Q. (By the Court): Did you sell to Germany?

A. No, sir, but before the time we finally put up the price to where we thought they would stop, they had bought one order, your Honor, before this. I said, "Make it \$5 and that will shut them up." They bought it, and from that time on we didn't sell them.

Q. When was that?

A. I can't remember that particular time.

Q. What year?

A. I think that was in 1938, if I am not mistaken.

Q. (By Mr. Alioto): Mr. Bransome, I am not saying [2121] anybody who sold to the Germans or anybody else in 1938 and 1939 was unpatriotic. That is a matter that you introduced here.

(Testimony of Edwin D. Bransome.)

The Court: Just a minute. What date does your question imply?

Mr. Alioto: There was some testimony given by Mr. Burwell that Mr. Sneath of Electro Metallurgical came out to see him in Colorado in 1939, and as a part of the program of getting rid of the oxide, a million pounds was sold to Europe through Sir Edmund Davies, who was head of the cartel in Europe, most of which went to Germany. That is the evidence in the record.

The Witness: I don't know whether a million pounds went to Germany and I doubt it very much for the record.

Q. (By Mr. Alioto): In any event, you say the export price at this time was \$1.70 in your letter. Now, your sales to the French were at \$1.30?

A. Wait a minute. Will you read the rest of that, Mr. Alioto? I said those prices were made for certain purposes.

The Court: Those prices according to the letter were made by the purchasers, not by the sellers.

Mr. Alioto: I do not care who made the prices. I just want to know why you were selling 40c below, you meaning the Metallurgical Company, to the French group.

The Witness: Do you know any orders that were sold at \$1.70 or above? Are they in the record?

Q. (By Mr. Alioto): Mr. Bransome, my question is a rather simple one. You say the export price is \$1.70.

A. I said the price was \$1.70 on oxide, and that

(Testimony of Edwin D. Bransome.)

letter, if you will read that to the jury again so there is no question—read that letter.

Q. "The prices for export are still the same, namely, \$3.70 per pound for Ferro and \$1.70 for Oxide. These prices make for people trying to buy domestic and sell export, but I am happy to say that we seem to have this phase under very good control." A. That is right.

Q. "And if any shipments do get away from us they are very small ones." [2123]

Q. Is there anything else you wanted me to read, Mr. Bransome?

A. No, this is all right. That shows—those we to discourage people.

Q. Now, we have the price of \$1.70 for oxide at the market price of 1940, is that a fact?

A. Call it—I don't think it is a fact, but call it \$1.70.

Q. Well, what do you mean, Mr. Bransome? You tell us. You read the letter and tell us what you meant by that.

A. It says here:

"The prices for export are still the same, namely, \$3.70 for ferro-vanadium, and \$1.70 for oxide. These prices make for people——"

"may," it should be——

"——for people trying to buy domestic and sell export."

Q. There isn't any question, then, that the price at some time had been \$1.70 for oxide?

A. I can't recall that. That's——

(Testimony of Edwin D. Bransome.)

Q. All right.

A. That's 1939. This is 1958. That's 20 years ago. I can't remember that.

The Court: How is this material at all to the issues in this case?

Mr. Alioto: Because, if your Honor please, at the same time there were American companies asking for this oxide, and they sold it to the French at 40 cents below market price.

The Court: Let's just assume——

Mr. Alioto: It's a good way of keeping it out of the country and keeping it away from the domestic producers,—as good as any.

The Court: If someone wanted to buy at \$1.10 and sell it abroad, is it your contention that these people were under any obligations to sell it to them?

Mr. Alioto: My contention is that they cannot jointly refuse to sell to them. Yes, that is my contention. They may not jointly, by agreement, refuse to sell to them.

And Union Carbide, with 75 percent of the production, can't singly refuse to sell to them, in my opinion, under the law.

The Court: Well,——

Mr. Alioto: The point I am trying——

The Court: That is a new law; that is a new law.

Mr. Alioto: Your Honor has read the Moore case. There was a refusal to sell by agreement. Is there any difference between the two cases?

(Testimony of Edwin D. Bransome.)

The Court: I think a producer can sell to whom he pleases.

Mr. Alioto: In agreement with another producer, when they both have 100 percent of the market? [2125]

The Court: If you will just offer some evidence, now, showing an agreement, that is what I would like to get.

Mr. Alioto: Your Honor has gone through the Griffiths case and the Moore case, and there is a lot more in this case than in the Griffiths case, and you know what the Supreme Court did there. There is a lot more evidence——

The Court: They sustained the lower court. That is what they did. I am perfectly aware of that.

Mr. Alioto: The Griffiths case? They overruled the lower court, I thought.

The Court: Well, you read it again.

The proposition here is this: You are alleging a combination, an agreement——

Mr. Alioto: Yes.

The Court: Now, I would like to have some evidence showing that there was an agreement or an understanding to do this.

Mr. Alioto: Well, here are two companies. When they build a mill—when one company, at Uravan, builds its mill, it built it with steel supplied by the other company, and——

The Court: The jury has heard the explanation of that, why it was.

(Testimony of Edwin D. Bransome.)

Mr. Alioto: I think your Honor is becoming an advocate for the defendants rather than a judge at this point, [2126] and I respectfully take exception to it.

The Court: Offer some evidence in support of your allegations, that's all.

Mr. Alioto: I do respectfully take exception to the advocacy on the part of your Honor of the defendants' cause. We think that it is error, but we, of course, will take it up at some other point.

The Court: You may have an exception to anything that the Court says.

Mr. Alioto: Thank you very much, Judge.

I want it to be known that I am being very respectful in what I say to the Court. Sometimes in a cold record it looks as though I am not. I think I am being deferential.

Now then, my question very simply, if I can get at it—

The Court: I just want to repeat that this line of questioning that you are hearing with regard to this export business has nothing to do with this lawsuit, and is merely surplusage.

Q. (By Mr. Alioto): Now, Mr. Bransome, it is a fact,—what I want to find out is this: If the export price was \$1.70, why did you and Union Carbide sell to the French at the \$1.30 price?

A. I don't know. I think we sold the French because their backs were against the wall, and we sold them at \$1.30 because the domestic price was

(Testimony of Edwin D. Bransome.)

\$1.20 and \$1.10. I suppose we [2127] said \$1.30 is enough under the circumstances——

Q. And you negotiated——

A. Wait a minute. I want to look at this letter.

Q. You want to read the letter, again, to the jury? I will be very happy to. A. No.

Q. If there is anything else you want to comment on, you go right ahead and do it, sir.

A. Yes, I would like to read this, if I may.

Q. You go right ahead, sir.

A. (Reading.) "At no time has the situation been easy in the supply of ferro or pentoxide. Up until the present date we have been required to keep our inventories up to a reasonable figure, to refuse to sell a great many people who have had firm orders in one hand and cash in the other and were willing to pay practically any price we asked. As a matter of fact, for domestic consumption and what we did sell for export required us at one time to ship practically hot metal."

Now, doesn't that explain our whole viewpoint? Could you have a better letter than that, than that paragraph?

The Court: Let's defer the argument. The letter speaks for itself.

Mr. Alioto: Now, without the necessity of reading the other documents on this export matter, if your Honor [2128] please, this arrangement of splitting orders goes on up to June of 1940, and I would like to put these letters in evidence and call them to the attention of the jury at a later

Union Carbide & Carbon Corp., et al. 1913

(Testimony of Edwin D. Bransome.)

time—these telegrams, rather. We will offer these as a group.

Mr. Archer: Are these all Vanadium Corporation exhibits?

Mr. Alioto: No. One of them is written from Mr. Gibbons to Mr. Swain of Electro Metallurgical Sales Company. Possibly I could segregate them, Mr. Archer.

Mr. Archer: Yes.

Mr. Holland: Would the Court give us the noon hour to look these over, so we can see whether we object to them or not, as long as he isn't going to read them now?

The Court: You can have them marked for identification.

And you may examine them.

Mr. Holland: I did not want to delay the trial any more by taking time to read them.

Mr. Alioto: We will offer as one group an exchange of correspondence and cables from Mr. Bransome with the Electro-Chimie of France.

The Court: This is for identification.

(The exchange of correspondence referred to was marked Plaintiffs' Exhibit No. 167 for identification.) [2129]

Mr. Alioto: We offer next for identification a single letter from Mr. Gibbons to Mr. John Swain, the vice-president of Electro Metallurgical Sales Corporation, with reference to a 30,000 pound order of V_2O_5 for the Societe de Electro-Chimie. We offer that for identification, too, at this time. We would

(Testimony of Edwin D. Bransome.)

like to offer them in evidence after the noon hour, if your Honor please.

The Court: Counsel may have an opportunity to examine them.

(The letter referred to was thereupon marked Plaintiffs' Exhibit No. 168 for identification.)

Q. (By Mr. Alioto): You saw a good deal of Mr. Burwell, didn't you, Mr. Bransome?

A. No, sir, I did not.

Q. Well, now, Mr. Burwell was at one time connected with the Metals Reserve program, I take it, and the Manhattan Project?

A. Yes, that's right.

Q. He did work with the Atomic Energy Commission? A. That's right.

Q. And in connection with those things you saw him, did you not?

A. Well, I saw him at the Manhattan Project. I don't think I saw Burwell more than once. I saw Van Fleet.

Q. Yes.

A. I don't know whether Burwell was at any of the meetings in the Atomic—in the Manhattan District, which, first-hand—they were formed to make the bomb. I don't—I don't want to bet that I didn't see him at any of those meetings, but we'll assume that I saw him once.

Q. On the Colorado Plateau, when you visited there, you saw him on several occasions, didn't you?

A. Well, over a period of three or four years, whatever it was, I think that I may have seen him

(Testimony of Edwin D. Bransome.)

several—several is probably right—three or four times.

Remember, Mr. Alioto, that I was not only president of the Vanadium Corporation; I served on the Advisory Defense Council.

Q. Yes, I know that.

A. Wait a minute—its successor, the Office of Production Management, the War Production Board. I represented the steel industry with Judge Morrow in the so-called big steel case. I served on confidential missions. And I had charge of an ammunition program.

Now, that means that most of that time, most of those years, I was in Washington, and my—Mr. Laub, who follows, or any of these people, will tell you that I got to my office on Monday morning, and when I went out to the Plateau it was very quick stuff—I would fly out and get there, and go over the lousiest roads you ever saw, and then come out of those same roads down again and fly back. And I wasn't out there buddy-buddying with anybody.

Q. (By the Court): The question is, How often did you see Mr. Burwell out there?

A. Several times.

Q. (By Mr. Alioto): Well, now, you don't deny that you discussed ore prices with both Burwell and Van Fleet, do you, Mr. Bransome?

A. Certainly—I don't know what you mean by "deny" that I discussed them.

Q. You talked about ore prices to both Burwell

(Testimony of Edwin D. Bransome.)

and Van Fleet, didn't you—your competitors, so-called?

A. Not to my recollection, no.

Q. You mean at no time did you ever discuss ore prices?

A. Oh, they may have talked about the prices that they had out there, and the prices of ore, and may—on a couple of occasions may have said, "Is the ore coming in?", and "How are the prices?" That's probably so.

Q. And you would tell them what your prices were, would you?

A. No, I don't think so.

Q. When they asked you "How are the prices?", you wouldn't answer them, is that it? [2132]

A. No; we had constant battle, through our people, between them, because we thought they weren't living up to what their listed prices were, and it was a constant war. Burwell has testified here—in the transcripts that I read—that at one time some of the people wanted to shoot them off the claim.

Q. Well, did you think that they had some obligation to live up to listed prices?

A. No.

Q. Then why—

A. They had no more obligation—look, that's common in business. They call them price-cutters.

Now, any man—I have testified that we would pay any price for ore that we saw fit to pay at any time, regardless of anything. Now, that was

(Testimony of Edwin D. Bransome.)

our policy all the time, because we had a government mill that we were trying to fill and get with ore—to get V_2O_5 —not for the Vanadium Corporation, but for the defense effort. We were getting the magnificent sum of two cents a pound of V_2O_5 produced for building and running that mill and doing the whole work. Now, that's how much we were interested, as far as the selfish interests that the Vanadium Corporation had—two cents a pound of V_2O_5 on all that work.

Q. For instance—I am not talking about selfish interests, or anything else. I am simply trying to get at certain [2133] facts. Now, let's forget about Monticello for a moment.

You purchased ore before you built any mill at Monticello, didn't you?

A. I didn't purchase it.

Q. Your company.

A. I instructed our people, Mr. Viles, to buy the ore, and at Monticello I said, "I want 25,000 tons of ore in the pile when we have this mill finished in September-October."

Q. I am not talking about——

A. They said, "Yes, we will get it." And that was all. I didn't tell them what the price was to be, or anything else, or——

Q. Did you have a mill at Monticello in 1940, sir?

A. No. I think that was 1941. We were talking about Monticello in 1940, though.

(Testimony of Edwin D. Bransome.)

Q. You actually got Monticello in 1942, didn't you?

A. I don't know whether we got the water rights out there, or—I don't know what the dates were.

Q. All right. In any event, there was a time when you decided to open up your Naturita plant?

A. That's right.

Q. And that came about 1940, did it not?

A. I think that was 1940 that it was opened up. We were out there fussing around in 1939. I believe it may have been '38. [2134]

Q. At a connection with opening up your Naturita plant, you had to determine how much you were going to charge for the ore, isn't that correct? A. Oh, yes.

Mr. Holland: You mean "pay" for it.

Q. (By Mr. Alioto): Pay for the ore.

A. That's right.

Q. All right. Now then, did you not instruct your folks in 1940 that they were not to pay more for the ore than U.S.V. paid?

A. No, sir. The price of ore was arrived at backwards, from the mill in Bridgeville back, and it was somewhere around 20 cents, 20½ cents, whatever it was, and we couldn't get the ore. So we raised that price to 21.

Now, after that we paid all kinds of prices. 21 wasn't bringing in ore. We paid any amount of different prices. We loaned prospectors ore—I mean, individual miners, the small miners, we gave

(Testimony of Edwin D. Bransome.)

them equipment, we hauled their ore for them, we did everything to get ore for the defense effort.

Q. Speaking now of Naturita and the period just before the opening of your plant at Naturita, two or three months before that time, do you recall having a meeting in New York with Mr. Van Fleet and Mr. Burwell? A. No, sir. [2135]

Q. Did you ever have a meeting in New York with those two gentlemen?

A. Not that I recall. I may have met them casually.

Q. On anything relating to business, whether it is the Maggie C. or Dry Valley?

A. Not together. I don't think I ever met Burwell and Van Fleet together in New York at all.

Q. Well, did you ever meet Van Fleet in New York for the purpose of discussing business of any kind?

A. Yes. I met him in respect to the Dry Valley claims.

Q. Now, just before you opened up your plant at Naturita didn't you have a meeting at your club with Mr. Van Fleet? A. What club?

Q. Did you belong to a Union Club of some kind in New York?

A. I belong to many clubs in New York.

Q. Is there one called the Union Club, Mr. Bransome?

A. Yes, sir. But I don't belong to it.

Q. Well, did you ever go to luncheon there, at the Union Club? A. No, sir.

(Testimony of Edwin D. Bransome.)

Q. What is the name of your club in New York?

A. Oh, I have got quite a few in New York.

Do you want me to go over the list?

Q. Just some of the more prominent ones.

A. I'm ashamed of some of them.

Q. Some of the more prominent ones, Mr. Bransome.

A. Well, the Uptown Club and the Cloud Club—which is a luncheon club. It is quite possible that I might have met either Burwell or Van Fleet, or both of them.

Q. At where?

A. The Uptown Club.

Q. Yes. Now, do you specifically remember meeting in the Uptown Club just before you opened up at Uravan, at which you discussed labor situations, ore prices, and general conditions on the Plateau?

A. No, sir.

Q. You aren't actually in the position, are you, Mr. Bransome, to deny that such a meeting took place?

A. I wouldn't deny it. I just don't remember any such meeting of any kind. It must have been awful casual, though, if it was.

Q. Now then,—

A. Wait a minute, now. We had ore in a pile in the yard in Naturita. I guess—no, that was—they tried to buy it from us and we wouldn't sell it to them.

Q. Now then,—

A. We wanted to stay in business.

(Testimony of Edwin D. Bransome.)

Q. I don't think your counsel finished reading a letter that was written to Mr. Kaiser, and I would like to finish it [2137] and ask you about it.

There is here in evidence a letter written to Mr. H. D. Kaiser.

Now, I take it you knew Mr. Kaiser, didn't you?

A. I never knew him, never met him.

Q. Of the Atomic Energy Commission?

A. Not to the best of my knowledge.

Q. Mr. Kaiser of the Atomic Energy Commission in Washington, D. C. And that letter is dated January 22, 1948. And in that letter—

First of all, do you recall a conversation with Mr. Burwell in 1947 in which he discussed with you certain ideas under what he called the "Process 'C',"—does this "Process 'C'" ring a bell with you, Mr. Bransome? A. No, sir.

Q. Do you recall a discussion with him about a method of producing uranium that would give you a cost of 65 cents on vanadium?

A. No, sir.

Q. Well, the letter reads as follows:

"In this connection I had an interesting talk"—

The Court: Who wrote the letter?

Mr. Alioto: Mr. Burwell wrote the letter to Mr. Kaiser of the Atomic Energy Commission, in which he refers to Mr. Bransome. I want to read that letter and ask Mr. Bransome [2138] if the facts recited with respect to him—

The Court: Has the letter been admitted in evidence?

(Testimony of Edwin D. Bransome.)

Mr. Alioto: Oh, yes. This is Exhibit 58, if your Honor please.

The letter states as follows:

"In this connection I had an interesting talk with Ted Bransome as a result of a casual meeting which developed into a brief discussion of the western situation. I told Ted that I believed that vanadium could be produced at a by-product price of 65 cents per pound of V_2O_5 from a properly engineered plant with the economies of such a plant and at the same time would produce uranium for the government at a much lower price than is being considered now."

Q. (By Mr. Alioto): Now, can you say, Mr. Bransome, that you never had a discussion with Mr. Burwell in New York in 1947 at which the question of producing V_2O_5 at 65 cents was discussed? Can you deny that that happened? Or is it you just don't remember any discussion?

A. I don't remember it, and I don't remember the extent—I will deny that it ever happened, because I just testified just a little while ago that I had gone to the Atomic Energy [2139] Commission and told them to produce it in the various mills.

Q. At this point we are not talking about that; we are talking—

Q. (By the Court): Did you have this conversation with him? A. No.

Q. (By Mr. Alioto): About 65 cents?

A. No, sir, I didn't.

(Testimony of Edwin D. Bransome.)

Q. You never discussed the figure of 65 cents cost for vanadium?

A. In connection with the 500-ton mill as a certain price—I may have discussed 65 cents, 65 cents, that figure is in connection with a toll charge that they would charge us for mining our own ore.

Q. Now then—however, is it your recollection that except for this toll charge arrangement on the Maggie C. and these other claims, that you never discussed a 65-cent cost of production with Mr. Burwell? A. I did not.

Q. All right.

Then Mr. Burwell continues in this letter to Mr. Keiser of the Atomic Energy Commission:

“While the price of 65 cents per pound of V_2O_5 would be a Godsend to V.C.A., in view of [2140] their present 85-cent cost,”——

Now, did you have, in 1946, an 85-cent cost for vanadium oxide?

A. At Naturita? I would presume so. The record will show what it was. We were starting that up; we kept it going for the war effort. Our costs in Peru were around 40 cents.

Q. I am talking about the——

A. All right, using the same price, the competition that we had, we used 40-cent oxide from Peru. Now, when we had to sell oxide, we weren't at the mercy of anybody—we had 40-cent oxide. It was less than that; it was fifty—well, it was about 40-cent oxide completed. The ore came up from Peru——

(Testimony of Edwin D. Bransome.)

Q. In '46 you had 40-cent oxide? 1946, after the war, you had 40-cent oxide somewhere?

A. I think—I can't be sure whether 40-cent oxide—

Q. How many pounds of oxide did you need for ferro-vanadium—two?

A. Yes, approximately.

The Court: How is this material?

Mr. Alioto: If your Honor will let me develop it, I will show you how it is material.

The Court: I want you to have some basis for the development. What has this got to do with this lawsuit?

Mr. Alioto: If he had 40-cent oxide, if your Honor please, that would be a price of ferro-vanadium cost of [2141] production of about \$1.30, and it was being sold at \$2.70, which I think is a matter of monopoly pricing that the jury can consider. But I don't think it was 40-cent oxide in 1946, either. I think it was 85-cent oxide.

Q. (By Mr. Alioto): Do you have any recollection as to whether it was 85-cent or 40-cent oxide in '46-47?

A. No. You have all the records on that. And the records are here.

Q. Well, that record has not been admitted, on the matter of costs.

Now, let me read on:

"While the price of 65 cents per pound of V.O. would be a Godsend to V.C.A., in view of their present 85-cent cost, the principal concern of T.B.

(Testimony of Edwin D. Bransome.)

was the possibility that this material would also be available for open market sale at the same price, which might enable competition to enter the ferro-vanadium field by way of Continental Ore or other competitors."

Now, are you in a position to say that the man who wrote this letter in January, 1948, did not have this conference with you?

A. I am in a position to say he did not; that did not occur. [2142]

Q. O. K.

Q. (By the Court): At that time was Mr. Burwell connected with the company?

A. I don't remember, your Honor. I think he probably had just resigned. And I'm taking that merely from reading the transcript that I read since I came out here a couple of days ago.

Mr. Alioto: We offer the letter that the Court rejected, indicating the effective date of resignation was February 1, 1948, after this letter. The Court rejected that letter, so that is not in the record, if your Honor please.

The Court: The date of the letter is what?

Mr. Alioto: The date of the letter is January 22, 1948. The testimony is he talked with Mr. Bransome, as a result of the writing of these letters in December of January, and then wrote a report of this meeting to the Atomic Energy Commission.

Q. (By Mr. Alioto): There did come a time in 1948 when you learned the Atomic Energy Commission had made a statement that it was going to tie

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(Testimony of Edwin D. Bransome.)

its uranium sales to the vanadium market, didn't you? A. I don't recall that.

Q. There has been admitted in this case as Plaintiffs' [2143] Exhibit 59-A, a statement of Mr. Gustafson. Did you know him, Mr. Bransome?

A. Yes, I knew him quite well.

Q. And you worked with Mr. Gustafson in connection with various war matters and the Atomic Energy Commission?

A. Not various war matters. John Gustafson was in the raw materials end of the Atomic Energy Commission. I never knew him otherwise.

Q. Were you an adviser of the Atomic Energy Commission? A. No, sir.

Q. Or any member of the Atomic Energy Commission?

A. No, sir. I was one of their boys that produced for them, that was all. I never advised them. They told me.

Q. His statement, Mr. Bransome,—and it is evidence in this case put in through the testimony of Mr. Burwell—is:

"The Atomic Energy Commission statement is that since the estimated annual production of the Colorado Plateau, even under an accelerated program, would be small in relation to total U. S. requirements and the supply available from foreign sources, it appeared more economical to obtain the uranium as a by-product from vanadium operations which were geared to the vanadium market."

Did you know, sometime in 1948, that the Atomic

(Testimony of Edwin D. Bransome.)

Energy Commission had depreciated the Colorado Plateau to that extent, [2144] and had decided to tie its uranium production to vanadium sales?

A. No, sir.

Q. Did you know that at that time? That never came to your attention?

A. Never. To my knowledge, I don't recall. It may.

Q. Don't you recall, then, that some big fight developed in Congress, and elsewhere, in which ultimately that opinion was reversed, after Lillienthal left the Atomic Energy Commission?

Mr. Archer: I object to that, your Honor. David Lillienthal did not leave the Atomic Energy Commission. He fulfilled his term.

Mr. Alioto: After he left or fulfilled his term.

Mr. Archer: And he was asked to continue by the President, and he refused.

Q. (By Mr. Alioto): In 1949 do you remember an argument about tying uranium to vanadium sales at all?

A. No. I remember—my advice to the Commission was to go ahead and put the ore through and let the chips fall where they may.

Q. Then your testimony is, so it will be clear in the record, that up until 1949 you do not even remember that there was a highly publicized argument about tying uranium to the [2145] vanadium ore, is that it?

A. No, sir, I don't remember.

Q. Did you ever ship vanadium oxide to other

(Testimony of Edwin D. Bransome.)

manufacturers of ferro-vanadium except the French principal for which you acted as agent, as you say?

A. Shipments to whom?

Q. To any other manufacturer of ferro-vanadium. A. In the United States?

Q. Anywhere.

A. I don't recall that. You would have to show me the record on that. The sales department knows more about that than I know.

Q. Did you have any policy against shipping vanadium oxide to some firm that manufactured ferro-vanadium?

A. No. If we had sufficient oxide on hand we would sell it to anybody at the proper price. We sold oxide to anybody that wanted to buy it. We sold it to steel makers, we sold it to everybody, and we would have sold them ore if they wanted to use it in the bath. They never could use the ore or oxide in the steel bath.

Q. In connection with that, do you share the opinion of Mr. Remmers—let me go a little bit back on that.

Did your company ever offer oxide for direct reduction in the steel bath?

A. Yes, sir. [2146]

Q. It did. And it sold oxide for direct reduction in the steel bath?

A. I don't know how much we sold.

Q. Did you put anything in it beside vanadium oxide itself? A. Not to my knowledge.

Q. Do you share Mr. Remmers' view—

(Testimony of Edwin D. Bransome.)

A. I don't know what Mr. Remmers' view is.

Q. Let me ask you, in your opinion does the addition of fluorspar to vanadium oxide add anything to it on a direct reduction basis?

A. Well, it has been pretty nearly 20 years before I was metallurgically inclined, but the addition of fluorspar wouldn't sound very persuasive to me, that it would add to the value of vanadium in a tool field, or anything of that kind.

Q. Would you agree with the statement that French dressing would be more efficacious than fluorspar?

Mr. Holland: Your Honor, this witness is not a metallurgist, as Mr. Remmers was. I don't know why he is going into these technical questions.

The Court: Objection sustained.

Q. (By Mr. Alioto): Do you know a Dr. Saklatwalla?

A. No, I never knew Dr. Saklatwalla.

Q. He was a director of your company, wasn't he? [2147]

A. Not while I was there.

Q. Wasn't he employed by your company?

A. Not while I was there.

Q. Did you ever meet him?

A. I never met him.

Q. Do you know his reputation as a metallurgist?

A. Well, that was open to dispute. You will find some people who thought he was pretty good and some people who thought he was lousy.

Q. Did you ever have him patent, or did you,

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(Testimony of Edwin D. Bransome.)

in 1938, possess a patent on the direct reduction of oxide with the use of fluorspar in the steel bath?

A. Oh, gosh, I don't know. But I will tell you—I shouldn't say this, but in my opinion, I'll bet it didn't work.

Q. Well, if it didn't work, someone made some representations to the government that might be a little serious.

A. Through Saklatwalla?

Q. Isn't this a Vanadium Corporation of America patent that I am holding in my hand?

A. Yes, United States Patent granted to Benjamin B. Saklatwalla in 1931. I don't know what it is for.

Q. Who owns that patent?

A. I imagine it was assigned to the—I don't know. It may be Ferangi owned it. Was it assigned?

Q. Read the heading on that patent and tell us who owned [2148] the patent.

Mr. Holland: Your Honor, I do not see any materiality to this.

A. That is 1931.

Mr. Alioto: Mr. Holland spent a long time trying to establish the fact that the addition of fluorspar was some kind of unfair trade practice.

The Court: It is absolutely immaterial. Objection sustained.

Mr. Alioto: Your Honor permitted Mr. Holland to spend two hours on that subject.

The Court: The Court has ruled. This is something back in 1931.

(Testimony of Edwin D. Bransome.)

Mr. Alioto: This is a patent that was in effect in 1938, if your Honor please, and Mr. Holland implied the addition of fluorspar was an unethical practice, and your Honor let him do it. Here is a patent held by these people in which they make a representation to the United States Government that it is efficacious.

The Court: We will have no further discussion on that matter now. The Court has ruled on it and it has no apologies for its ruling.

Mr. Alioto: We think it unfair that Mr. Holland was permitted to go on for three hours examining on that subject when he had a patent in his pocket that shows the [2149] efficacy of the addition of fluorspar.

Mr. Holland: I haven't gone on any subject for three hours.

Mr. Alioto: Yes, in your examination of Mr. Leir.

The Court: Just a moment.

I do not think counsel has a right to object to the time others have taken in this case.

Mr. Alioto: Particularly when I am not given one minute on that subject.

I would like to make a record on this. It is inconceivable to me that this is not an unfair ruling. Just let me establish this for the purpose of the record.

Q. (By Mr. Alioto): You do agree with me, don't you, that this is a vanadium patent that was held by your company during the time that you

(Testimony of Edwin D. Bransome.)

were its president? You do agree with me, don't you?

A. Why, I assume that patent—1931—why, it was run out.

Q. It ran out in 1949, or 1948.

A. Was there an extension on it? Seventeen years is the life of a patent.

Q. 1931 plus 17 is what? A. 1948.

Q. So it was in effect when you were president of your company and during the entire period of time, was it not? [2150]

A. There were thousands of patents we had. I don't know whether that was one of them or not. I never saw the patent.

Q. From the title——

Q. (By the Court): Do you know anything about it? A. No, sir, not a thing.

Q. (By Mr. Alioto): From the title of the patent isn't it apparent that it belonged to Vanadium——

The Court: Let us assume it did. He says he doesn't know a thing about it.

Mr. Alioto: If he did, I offer it to show that this company made representations to the United States Government on the basis of which they secured a monopoly on the invention to the effect that vanadium oxide reduction in a steel bath was even more efficacious than the ferro-vanadium itself.

Mr. Holland: Before you read it may I see it?

Mr. Alioto: Mr. Holland had extensive examination that there was some kind of unethical prac-

(Testimony of Edwin D. Bransome.)

tice involved in putting fluorspar in vanadium oxide and selling it as a direct reduction in the steel bath—

Mr. Holland: I never made such a statement as that. I contended it was unethical to sell straight oxide at a higher ceiling price. [2151]

Mr. Alioto: I offer to prove that this patent, which I am offering for the purpose of showing that the Vanadium Corporation of America, through a vice-president and director of that company, made representations to the United States Government of the efficacy of using vanadium oxide in a steel bath with the addition of fluorspar specifically, and aluminum as well; that this patent was in existence during the entire period of time that Mr. Bransome was the president of this company; and that despite the patent, there was a suppression of the use of vanadium oxide in the steel bath, because they were making more profits on their ferro-vanadium.

Your Honor, you recall Mr. Priestley wrote a letter—

The Court: Just make your offer.

Mr. Alioto: That is right.

We offer to prove this is the same position taken by Mr. Priestley, and from this I think the jury can infer that the two companies acted jointly to suppress the use of oxide in a steel bath. We offer it for that purpose, and for the purpose of showing the actual facts that the addition of fluorspar to vanadium oxide is not as inefficacious as has

(Testimony of Edwin D. Bransome.)

been contended here by the chef d'oeuvre of the vanadium industry, Mr. Remmers, who thought that French dressing was more efficacious.

The Court: Your offer is rejected. It has nothing to do with this lawsuit. Immaterial. And could be only [2152] prejudicial.

Mr. Alioto: May we have this marked so we will know of what we are speaking at this point in the proceedings?

(The patent referred to was thereupon marked Plaintiffs' Exhibit No. 169 for identification.)

Mr. Alioto: Is your Honor also rejecting the offer of proof to the effect that the Vanadium Corporation of America deliberately suppressed this patent after securing it?

The Court: Yes, sir. Same ruling.

Mr. Alioto: Just to complete the record in that matter, if your Honor please, I would like to offer a series of other patents issued by the United States Government.

Mr. Hollar: May I see them?

Mr. Alioto: Yes.

Let me just have them all marked as one. They tend to prove the same thing, namely, the metallurgical efficacy of vanadium oxide with the addition of a flux such as fluorspar or other material such as aluminum, and we offer this in connection with this witness, who has information about it, according to our information.

(Testimony of Edwin D. Bransome.)

(The group of patents referred to were marked Plaintiffs' Exhibit No. 170 for identification.)

Mr. Alioto: And we offer it to rebut, specifically, the extensive examination by Mr. Holland of Mr. Leir. Mr. Remmers said he was familiar with all the literature on this [2153] when he gave his French dressing crack.

The Court: Let us not have any argument at this time.

Mr. Holland: We object to them on the ground they are not even our patents, and have no bearing on this case. We were not contending—at least the Vanadium Corporation, in its examination of Mr. Leir, that there was anything wrong with putting a little fluorspar in it. We were contending there was something wrong in putting nothing in and then charging a price over the ceiling.

The Court: The offer is denied and an exception allowed. It is immaterial.

Q. (By Mr. Alioto): Now, Mr. Bransome, there is in evidence a document dated November 1943, which was a response to the Continental Ore Company by Mr. Gustav Laub, your assistant vice-president, when the Continental Ore Company requested a regular, dependable supply of ten to fifteen thousand pounds of vanadium oxide per month. Mr. Laub rejected that in November, 1943. At the time that letter was written,—and the letter is Exhibit 41—did Mr. Laub take up that matter with you, and did you discuss it with him?

(Testimony of Edwin D. Bransome.)

A. I did not.

Q. Do you remember whether the Continental Ore Company or the Apex Smelting Company requested a regular supply of [2154] vanadic acid from you in 1939?

A. No, I wouldn't say that I recall that.

Q. In 1940? A. No, sir.

Q. 1941?

A. It is a sales department matter.

Q. Do you have any knowledge that they requested a regular supply from you in 1941?

Mr. Holland: I do not believe that there is any evidence that they did, Mr. Alioto. I think the evidence is to the contrary.

The Court: He does not know, he says.

Q. (By Mr. Alioto): Are you aware of any request by the Continental Ore Company or the Apex Smelting Company for vanadic acid—

A. That is a sales department matter, Mr. Alioto. Any chief executive lets his sales department run the sales department and the operating department run the operating department. The only reason I was in this picture around the West was I really liked to go out there.

Q. You were pretty interested in the fact when they were dismantling the Apex plant, weren't you?

A. Not a bit. I don't remember anything about it.

Q. Come, now, Mr. Bransome.

A. Don't tell me I did when I didn't. [2155]

Q. Didn't Mr. Laub write you special reports

(Testimony of Edwin D. Bransome.)

about the Apex dismantling and your special interest in it?

A. I don't know what you mean by a special report.

The Court: We will take a recess until two o'clock.

(Whereupon a recess was taken until 2:00 o'clock p.m.) [2156]

Friday, June 20, 1958, 2:00 o'clock p.m.

EDWIN D. BRANSOME

called as a witness by defendant Vanadium Corporation, being previously sworn, resumed the stand and testified further as follows:

Cross-Examination—(Continued)

Q. (By Mr. Alioto): Mr. Bransome, I want to call your attention for just a moment to the government meeting that was held in June of 1941 about which I believe you already testified on direct examination. I think your testimony was that you were sitting there as a government officer of some type rather than as a representative of the Vanadium Corporation of America.

A. That's true.

Q. Now, then, there was, however, a representative of the Vanadium Corporation of America, was there not?

A. That's right.

Q. Do you recall who that was?

A. Mr. Ward Miller.

(Testimony of Edwin D. Bransome.)

Q. Ward Miller? A. Yes.

Q. What position did he hold in the Vanadium Corporation of America?

A. Vice-President in charge of sales. [2157]

Q. Was there also a representative of the Electro Metallurgical Company or Union Carbide?

A. I don't remember. I assume that there was, Mr. Alioto. It was a general meeting of—a general meeting that Ernie Whiteside called for raw materials of a strategic nature.

Q. Now, you recall at that meeting that Mr. Leir made a statement that he thought that the—made a statement at the public meeting that he thought that the oxide was in short supply and that something should be done to encourage the production of oxide by the independent mills?

A. No, sir.

Q. Do you remember in that connection that he mentioned Shattuck and Blanding and Nisley & Wilson as mills which, if properly encouraged, could produce 51,000 pounds of oxide per month?

A. No, sir.

Mr. Holland: Is this in the testimony or is that what Mr. Leir said he couldn't remember?

Mr. Alioto: I am asking the witness whether or not this statement was made by Mr. Leir, not what the witness said.

Q. Do you remember Mr. Leir making a statement about what the problem was on supplies?

A. No, sir, I do not, sir, because I was not in that [2158] meeting for a very long period of time.

(Testimony of Edwin D. Bransome.)

As I told you, I was representing the industry of the country, between General Neustadt and Mr. Hillman, and I was there for a comparatively short space of time.

Q. Well, do you remember what, if any, statements were made by the representatives of the Electro Metallurgical Company and the Vanadium Corporation of America?

A. Do I remember any of those statements?

Q. Yes.

A. No, not at all. I don't believe they were made while I was in the room.

Q. Then you have no present recollection of the substance of anything that was said by Mr. Ward Miller, for example, of the Vanadium Corporation of America?

A. No, I stopped Mr. Miller from talking.

Q. How do you mean that you stopped him from talking?

A. Well, I stopped Mr. Miller because—I had never heard of Mr. Leir in the vanadium business, I had never heard of the Continental Ore Company, and I never heard—I heard of him as having a mill or a claim only, a claim, or having a mill or producing, really producing vanadium, and he started asking question of Ward Miller that were statistical questions and I said to Ward Miller: "Now, wait a minute. I think that those questions should be addressed to Dr. Wilbur Nelson who is conducting this meeting because they are confidential [2159] figures, and let them come from the

(Testimony of Edwin D. Bransome.)

Chair and not from you, Ward. I instruct you not to answer any more questions."

Q. Well——

A. "The Government has those figures." Now that—that was my—that's my sole—as far as I recall, that was my only statement or anything that I said in that meeting.

Q. I understand that that is what you said. Now, my inquiry is, do you remember that Mr. Ward Miller, except for this exchange on statistics, do you remember whether he said anything about the nature of supply and demand as of the time of the meeting? A. I do not, because——

Q. You have no recollection?

A. No, sir. I wasn't in that meeting long enough, I don't think, to know whether he did or not. I'm quite sure he didn't.

Q. Now, you certainly knew in April of 1942 that there was a mill called Apex that had been producing ferro-vanadium, hadn't you?

A. I don't recall in 1942—it wasn't a mill. There was no mill. Apex, as I found out later, Apex wasn't a mill.

Q. Well, it was producing ferro-vanadium by the aluminum method.

A. It was buying oxide and putting it in pots and adding aluminum and something else to it and producing—they bought [2160] an intermediate product from somebody who had produced it in mills of their own and claims of their own, and he put those in his pot. Now, that's all I know about

(Testimony of Edwin D. Bransome.)

it. I knew nothing about Apex, the conduct of it, what they had or anything, except that they produced exothermic vanadium.

Q. Did you ever see the product ferro-vanadium produced by Apex? A. Never.

Q. I show you what has been placed in evidence here as Plaintiffs' Exhibit 62, Mr. Bransome. Would you be good enough to look at the document—on April 14, 1942—and I call your attention to that initial along the left-hand side. Is that your initial there? (Examining.)

A. (Examining.) No. No, mine is bad enough, but it wasn't anything like that.

Q. It wasn't that bad? A. No.

Q. O.K. Now, then, one of the documents in the report—I will read it to you—is addressed to you. It is from Mr. Gustav Laub to—and he at that time was your vice-president in charge of sales, or was he in—

A. No, he was general manager of sales at that time, not vice-president in charge of sales. He later became that.

Q. Now, then, it is addressed to you, Mr. E. D. Bransome, President, and reads as follows: [2161]

"Inasmuch as the following information has been conveyed verbally, this memorandum, therefore, is for our records.

"With reference to the writer's memorandum of February 20 advising that Mr. Christiansen, vice-president of the above company, had informed us that they were going out of the vanadium business

(Testimony of Edwin D. Bransome.)

and had offered us their stocks of vanadium, raw materials, equipment, et cetera, as I have not heard further from Mr. Christiansen in this regard, I had Larry Johnson casually contact him by phone and tell him that I have not received the information that he promised to send."

Do you know who Larry Johnson was?

A. I think Larry Johnson represented us in some—probably in Chicago.

Q. He worked for the Vanadium Corporation of America? A. That's right.

Q. (Reading.)

"As a result, Mr. Christiansen, who is the vice-president of Apex, phoned the writer (that is, Mr. Laub) and stated that in going into the matter further they had run into some legal difficulties. Mr. Leir, president of the Continental Ore Corporation, with whom Apex has an agreement to furnish their entire [2162] production of vanadium, he acting as sales agent, objected strenuously to their breaching their contract, and upon referring the matter to their counsel, Apex were advised that Mr. Leir had a strong case against them and to make the most satisfactory arrangement with Mr. Leir that they could. This resulted, Mr. Christiansen advised, in Mr. Leir putting a proposition up to them in that they would produce vanadium at full capacity for a period of three months, after which time he would take over their equipment and raw materials contracts and produce the material himself. Mr. Christiansen therefore advised that

(Testimony of Edwin D. Bransome.)

they felt they would be obligated to produce at maximum capacity for a period of three months and have decided to proceed on this basis, but that they had not come to a definite conclusion about turning over the equipment and raw materials contracts after that time. The contract with Mr. Leir, he said, extended over the balance of the calendar year. And in the event the second part of Mr. Leir's proposition does not go through, Mr. Christiansen stated that they still proposed to offer us such raw materials as they had available, as well as plant equipment.

"The above information, at your suggestion, was conveyed by phone to Mr. E. K. Jenckes, Assistant Chief, Vanadium Branch, War Production Board."

Now, you remember having this discussion with Mr. Laub, don't you, Mr. Bransome?

A. That recalls a discussion—I don't remember it; it has been so long ago, and that one paragraph about E. K. Jenckes is the thing that brought it back to my memory—was that in line with our usual program with the Government, when they said they were going out of business, we got in touch with Jenckes—Laub got in touch with Jenckes and said: "A producer is going out of business. We want to report that to you." So he said he has offered the stock to us for sale. When the man came to us and told us that he couldn't sell us his equipment, I don't know whether we wanted the equipment or not—that would have to be determined by the mill at Bridgeville—but when the

(Testimony of Edwin D. Bransome.)

man—oh, Mr. Whatever his name is—Mr. Christiansen—said to Laub, “That deal is off,” we were interested—we never said we would take it—we said we would consider it, but he said, “The deal is off,” and he told me about it—he reported that to me because I was interested in all sources of supply. I said, “Don’t forget to call up Jenekes and tell him that they are not going out of production; they are in production.”

Q. And that is why you had him call Mr. Jenekes, is that it?

A. Definitely, There could be no other reason.

Q. Now, you knew at the time that Christiansen had dropped the matter and that Laub, through Larry Johnson, had resurrected these conversations, didn’t you?

A. I think that we might have been interested in magnesite or something that they had, if they were going out of business. I don’t think we were particularly interested in their equipment, but magnesite was hard to get in those days, and if he had magnesite to sell, that was probably—that is why—well, they turned it right over to the purchasing department and the purchasing department said that if they have magnesite or whatever was on the list, why, we are interested in buying it, because it came from Austria and it was difficult to procure, and I think that they might have been interested in buying that. As for the equipment, my best judgment tells me that they wouldn’t have

(Testimony of Edwin D. Bransome.)

bought any more than possible. We had all we wanted.

Q. Now, then, the next —

A. We might have bought the oxide because we were looking for oxide.

Q. The next special report, this paragraph that is underlined, and I asked you whether that was your signature, and the next special report from Mr. Laub, dated April 14, 1942, states, among other things:

"That Christiansen further stated that he would furnish us with the name of all of their suppliers of ores and oxides, the principal ones apparently being the Shattuck Chemical Company and Nisley & Wilson. He appeared to be most anxious that we obtain these raw materials rather than the possibility of Mr. Leir's getting them and continuing in the vanadium business."

Now, at that time that was brought to your attention, wasn't it?

A. I don't know what Mr. Christiansen's ideas were about Mr. Leir. He was his partner at one time, wasn't he, and I don't know why he should be interested in keeping him out of the business, if he had been his partner and working with him.

Q. Weren't you folks interested in the same thing and isn't this why he made the same proposal to you, Mr. Bransome?

A. Not a bit. Not a bit. We were in their—that letter does not say so. Those are not my initials and

(Testimony of Edwin D. Bransome.)

I don't believe they are initials or anybody's initials. They look like a couple of scratches.

Q. There is no doubt that Mr. Laub wrote that report, is there?

A. Well, it says "G.L." on the bottom of it. I assume that he did write it.

Q. All right, there is no doubt that Mr. Laub was the man who had contacted you about this problem just prior to [2166] this time, as you testified?

A. That would be his duty, to contact me as the chief executive of the company, to say that certain assets of another company are offered to the company. Mr. Laub couldn't buy them. He had to come to me and ask me whether I wanted to buy or recommend to the Board that the assets of a company be purchased by the corporation. I couldn't buy it myself; that had to go to the Board of Directors. I could make a recommendation. If it was in excess of ten thousand bucks, that all had to go to the Board and be decided upon by them. That was routine. This stuff is not heinous about him discussing the thing with me. He just made it a matter of record, the discussion he had with me, and I told him, "Now, don't forget to tell Jenekes." That is what this letter says. Jenekes was in charge of vanadium at the time.

Q. He is working for you folks now, isn't he?

A. No.

Q. Has he ever worked for you?

A. No, never worked for us.

(Testimony of Edwin D. Bransome.)

Q. Or for Union Carbide?

A. I have no idea.

Q. And, the final paragraph:

"We had an interesting discussion concerning low copper grained aluminum which they produce and release with necessary priority approval and I therefore turned [2167] him over to our purchasing department with regard to this item."

A. Low grained copper—low grained aluminum was used by us in reduction of vanadium in the exothermic process, and it was just procurement, and if he had any or was in a continuous business, the business of continuous supply of that, we were only too glad to get it, and if he wanted to become a supplier of ours—Mr. Laub didn't say anything to him, I didn't say anything to him—he just said: "Go and see the purchasing department, and if they are interested, and I am sure they will be, you can probably do business with them." That is what I assumed Laub said. I can't think of anything else.

Q. So then you bought 200,000 pounds of this from him?

A. We bought—we would have bought it from anybody.

Q. At 13½¢.

A. I don't recall if we even bought it. I don't recall the price of it. That is the purchasing department, the manufacturing department did that, but if we could have gotten this grained aluminum from him, we certainly would have bought it from him

(Testimony of Edwin D. Bransome.)

because we would have bought it from anybody. It was hard to get and we did not have a graining machine ourselves at the time and graining aluminum with a paddle is a little difficult to do. I don't know whether you realize it or you know the process or not, but it was difficult to [2168] procure at that time, and our purchasing department, as Mr. Laub said, "Take it up with the purchasing department" and, if they could have got it, they would have done it, because we were constantly in need of it.

Q. Wasn't the price of fine aluminum at that time about 15c?

A. I don't know.

Q. You don't recall?

A. That might—I don't think—I don't know enough about it to know whether grained aluminum was secondary aluminum or not.

Q. Why is it you didn't try to buy any aluminum before this time from this company? You knew it existed, didn't you?

A. As far as I am personally concerned, I didn't. The purchasing department may have.

Q. Wasn't this the start of commercial relations with the Apex Smelting Company and your company?

A. I don't know. As far as that goes——

Q. All right.

A. Wait a minute now, I would like to finish that up.

(Testimony of Edwin D. Bransome.)

Q. You go ahead and say anything you want about anything.

A. If they sold us for 13c when the price was 15c, I don't understand that at all. Our purchasing agent must have been pretty good.

Q. I asked if fine aluminum was 15c. This is a low [2169] copper grained aluminum.

A. Well, if it is a secondary aluminum, 13c might have been the going price for it.

Q. You don't know that it was, do you?

A. I certainly do not. I don't know anything about the transaction.

Q. Now, then, just about the same time you personally were out there negotiating to take the Blanding supply away from Apex, weren't you?

A. I never negotiated with anybody to take the supply of the Blanding—Blanding—what, Blanding's oxide?

Q. Yes. A. Never.

Q. Did you go out to Los Angeles and meet with a man named Garbutt about this time?

Q. Who did you go with?

A. Myself.

Q. Did anybody accompany you on that trip, Mr. Bransome? A. No, sir.

Q. And you talked to Mr. Garbutt alone?

A. Yes, sir.

Q. Can you fix the approximate time of this? Was it about January 1942?

A. I don't know what date it was. I am sure that it is in the record some place, and that could

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(Testimony of Edwin D. Bransome.)

be done. You can fix it for me. I will take whatever you say.

Q. I think the record indicates that the contract was dated about May of 1942, but didn't you contact him before the contract was drawn up?

A. Oh, yes.

Q. About four or five months before?

A. I would think so. An amusing thing was they told me Mr. Garbutt was a lone wolf and a hermit. Nobody could get near him. I said, "Let's see who he is." I picked up "Who's Who" and found he was president of the Los Angeles Athletic Club. There were 10,000 members there and I couldn't see that he was a recluse. I remember that.

Q. In any event, you did buy those Garbutt claims? A. Definitely.

Q. In January 1942 your company did buy the vanadium oxide [2171] from the Blanding Mines, didn't it?

A. I don't know whether it did. I assume it did. Let's say they did.

Q. And you knew at the time you were negotiating with Garbutt, didn't you, that the Blanding Mines was one of the suppliers of Apex?

A. No, sir. I didn't know whether it was Apex or anybody else. They were sporadically making oxide. Now, to whom they sold that, I don't know.

Q. Mr. Bransome, from 1930 on, Apex aside, from 1938 on, you and the Electro Metallurgical

(Testimony of Edwin D. Bransome.)

Company were the only producers of ferro-vanadium in the country, weren't you?

A. I don't know. I believe so.

Q. That is something you would know, isn't it, Mr. Bransome? A. No, it is not.

Q. Just the two companies?

A. Mr. Alioto, if you can get hold of vanadium oxide, a pot, and some grain aluminum, and something with which you can light it, you can produce ferro-vanadium of a grade that will be saleable.

Q. It is not difficult to do that, is it?

A. I don't think so.

Q. And it does not require an awful lot of money to get into that, does it? [2172]

A. I don't know what the investment is.

Q. You just said it wasn't very hard, you just get a pot and throw something in it. Would you say about \$25,000 to do it?

A. I have no idea. The grinding machinery and all that stuff would cost. I don't know what it would cost to be in business. Mr. Alioto, I want to repeat, I didn't know anything about Apex and I don't know anything about Apex today. I don't remember anything about it.

Q. You do not remember anything perhaps. It is true that you were the only two producers of aluminum from 1938 on to 1949 exclusive of this Apex production, is it not? Will you agree that that is true?

A. We would be very big millionaires and not

(Testimony of Edwin D. Bransome.)

fussing around with what we are fussing around with.

Q. That was true, wasn't it? You were the only producers of ferro-vanadium?

A. You didn't say that. You said aluminum.

Q. That is a slip. I am sorry.

You were the only producers of ferro-vanadium, weren't you?

A. Yes, I think we were.

Q. You had 100 percent of that business?

A. I don't know, sir. From what time on?

Q. From 1938 through 1949. [2173]

A. I don't know. I can't recall. But I will take any record that anybody gives me that says that Apex or anybody else produced ferro-vanadium.

Q. And the only competition that grew up in the whole period was the Apex Smelting Company, so far as the production of ferro-vanadium was concerned?

A. They were not competition as far as I was concerned because I didn't know anything about them, and they had been competition, I would have regarded them as such.

Q. Now, Mr. Bransome, I don't want to be argumentative, but if you received this memorandum from Mr. Laub that he was in Apex to buy this business, how can you say that you do not know anything about it?

A. I said as a competitor. I didn't recognize them as competitors because I didn't know anything about them. This memorandum was written.

(Testimony of Edwin D. Bransome.)

which Laub brought in to me and stated that there was certain stuff for sale.

Q. (By the Court): Did you know up to that time anything about Apex?

A. Not a thing that I can remember. I can't remember anything about Apex.

Q. (By Mr. Alioto): Mr. Bransome, you were in a government meeting in June of 1941 when Apex was represented there by Mr. Leir—

A. I didn't know who Mr. Leir represented in that meeting. [2174] I asked who Mr. Leir was and whether he was accredited in the meeting.

Q. All right, and you found out who he was, didn't you?

A. I did not. I said "Mr. Nelson will answer those questions, Mr. Leir, and not you."

Q. You want your testimony to say that in 1941 and 1942 you did not even know there was a producer in Chicago of ferro-vanadium who was the only other one in the business?

A. I would say as far as I was concerned, they were of no moment to me at all, and not enough for me to remember them.

Q. Not enough, and yet your vice-president and general sales manager writes personal inter-office memoranda to you?

A. The vice-president and general sales manager discussed with me the fact that somebody was going on of business and had certain equipment for sale. He couldn't buy it, Mr. Alioto. He had to come to me, as I went through a long discourse

(Testimony of Edwin D. Bransome.)

with you to tell you that it had to come up to me and then to the board.

Q. This Monticello plant was built for you with the help of government funds, wasn't it?

A. That is right.

Q. And then you operated the Monticello plant for a while and then there came a time when you tried to operate buy the Monticello plant from the government? [2175]

A. When did we try to buy it?

Q. Didn't there come a time when you tried to buy it after the Metals Reserve and the government program had come to an end?

A. I don't know whether we did or not.

Q. In any event, you did get the Monticello plant? You definitely went to the Atomic Energy Commission?

A. That is a fine plant, by the way.

Q. And then thereafter the United States Vanadium Corporation sold to you the Durango plant, didn't it?

A. I would say Vanadium didn't sell us the Durango plant. We¹ bought the United States Durango plant from the Metals Reserve—from the Defense Plant Corporation, as I recall it.

Q. How much did you pay for it, do you recall?

A. I don't know, but it must be a matter of record.

Q. Was it about \$75,000 or less?

A. I don't know. It was in lousy shape. Some

(Testimony of Edwin D. Bransome.)

idiot tried to put acid through the roaster—I think it was Mr. Burwell—in some experiment that he ran through. He put acid through the top of the roaster so it was completely out—

Q. It was the same roaster from which you were getting vanadium oxide to the tune of three million pounds, wasn't it?

Mr. Archer: I take it this "idiot" testimony is not being offered against Union Carbide?

Q. (By Mr. Alioto): There wasn't too much damage [2176] involved if they were getting three million pounds when they were in trouble?

A. We were not in trouble. They were in trouble.

Q. As a matter of fact, when they gave you that oxide in 1939, at the beginning of the war there, you were very short of oxide, weren't you, because you were closed down in Peru for two months before that?

A. In 1938 and 1939 we were bringing ore up from Peru, and I think you have figures there that show you—I think those are the figures, aren't they?

Q. I hate to waste time on it.

A. You aren't wasting time because you just made a statement there that we didn't have any vanadium, and we brought up three and a half million pounds, four million pounds, millions of pounds from Peru.

Q. Do you know Mr. Kett?

A. Very well.

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(Testimony of Edwin D. Bransome.)

Q. A very good man? Does he know what he is talking about?

A. On certain subjects he does.

Q. On September 12th, 1939, Mr. Kett writes, according to Plaintiffs' Exhibit 56:

"Due to the dry season just closing in Peru, and the consequent two months annual shutdown of plant, our stocks of oxide in Bridgeville must be immediately supplemented. Our position is particularly [2177] acute on account of the war. We have already received a quantity of oxide from the U.S.V. which they claim exceeds any amount which they are likely to get off Maggie C. Hence a delivery of ore to them and the storage in mill yard which will release immediately to us a certain additional quantity of oxide."

The Court: What is the date of that?

Mr. Alioto: September 12, 1939, if your Honor please.

The Witness: Where was the storage?

Q. (By Mr. Alioto): Do you think Mr. Kett knew what he was talking about in that first paragraph, Mr. Bransome?

A. Before you talk about Peru, there were dumps of ore down there by certainly a great many thousands of tons that ran something like six to seven percent better than anything out on the plateau. That was ore that could be brought up at any time and was brought up.

Q. Read that first paragraph and then tell me

(Testimony of Edwin D. Bransome.)

whether it was ore that could be brought up at any time.

A. "Due to the dry season just closing in Peru, and the consequent two months annual shutdown of plant, our stocks of oxide in Bridgeville must be immediately supplemented. Our position is particularly acute on account of the war. We have already received a quantity of oxide from the U.S.V. which they claim exceeds any amount which they are likely to get off the Maggie C. Hence a delivery of ore to them and the storage in mill yard which will release immediately to us a certain additional quantity of oxide."

Q. Was his statement that your position was acute correct?

A. Yes, they wanted ore and we gave them ore.

Q. And you overdrew your account by 300,000 pounds from the Maggie C., didn't you?

A. Well, we fulfilled it from other claims on the same basis. That was a toll arrangement.

Q. Here is one letter, Mr. Bransome, written by you marked "Personal and Confidential" to Mr. Viles, the mine superintendent in Monticello. Will you be good enough to examine that document and then just tell us what your recollection of that transaction was, if you remember?

Mr. Holland: May I see it?

Mr. Alioto: Sure.

Q. Before answering, Mr. Bransome, I would like to show that document to your counsel.

(Testimony of Edwin D. Bransome.)

A. That is all right. I would like to read it again.

Mr. Alioto: We will offer this in evidence, if your Honor please. [2179]

Q. Do you recall what that transaction was about, Mr. Bransome?

(The document referred to was thereupon received in evidence and marked Plaintiffs' Exhibit 171.)

A. I don't recall that specific transaction, but the memorandum, upon reading, brings back what it was—what in all probability it was.

Q. Let me read it first and then we will get it. This was from Mr. Bransome on May 25th, 1943, to Mr. D. W. Viles, Mine Superintendent, Monticello, Utah.

Subject, under that "Personal and Confidential":

"It occurred to me the thing we want to do is to have our trial, on the 1400 tons of rosecoelite made as quickly as possible at Durango and I cannot recall how long you said it would take to make delivery, that is, provided we discussed that point."

Who was operating Durango at that time?

A. We were, must have been.

Q. In 1943? Wasn't U.S.V. operating at Durango during that period?

A. I don't know.

Q. "With the above objective in view, it seems to me that you might be able to arrange with Johnny Hill and Paige Edwards the shipment of some of their rosecoelite ore at Naturita, even

(Testimony of Edwin D. Bransome.)

though we have to absorb the trucking, inasmuch as if it is desired to move the Naturita pile, the sooner we do it, the better.

"If trucks are going back empty for Fall Creek and Omega, it would seem that the main expense we would be subject to would be the loading.

"You probably have already thought of this, but if not, I think it might be arranged with Johnny and Paige in such a manner that would not prejudice any future price that we might get from Naturita.

"Will you let me hear from you as to what you think of this idea?"

Now, the Johnny and Paige referred to was John Hill of the U.S.V. Company, was it not?

A. No. That was M.R.S.

Q. He was with U.S.V. as agent for M.R.S., was he not? In any event, his name was John Hill. We already know who he was.

A. That is right.

Q. And the Paige was Paige Edwards?

A. Yes, and he was working for M.R.S.

Q. What was so personal and confidential about this matter? A. I don't know. [2181]

Q. You wrote the letter.

A. How can I remember what was personal and confidential 20 years ago? That was rosecoelite ore which would not run through the Naturita plant. Rosecoelite ore is different entirely from carnotite and it was adapted—it was not adapted to the process at Naturita and we did not run it and

(Testimony of Edwin D. Bransome.)

couldn't blend it, and didn't want to run it through, and we would rather have shipped that 1400 tons to Durango where they could use it and were using roscoelite ore because they were taking a lot of it from Placerville, and there was one big mine down there—I forgot what it was—I don't remember—we bought it later.

Q. When was the first time that you realized that the uranium content in this ore had a value more than anybody had previously imagined?

Mr. Holland: I object to that question. It has nothing to do with the case.

Mr. Alioto: I think it has, if your Honor please. We had a lot of discussion about uranium.

The Court: You may answer. I have a curiosity, too.

A. You see—may I go into a little detail on it? It will only take a couple of minutes.

Q. Yes.

A. U_3O_8 , the yellow oxide, was never taken out of the [2182] ore except where it occurred in trees.

Now, a tree was something where the igneous intrusion had come up, the hot metal, and displaced a tree, so that when we cut it out, you could see actually the twigs. You could see the branches, the twigs and everything else in the trunk of that tree, and it was really where a tree had been displaced.

That was red oxide and yellow oxide. We took that out and we took the V_2O_5 , red oxide, for ourselves, and we put on the side the other U_3O_8 , the yellow oxide, the uranium, and sold it to a man by the name of Balsley, and who sold it in turn to

(Testimony of Edwin D. Bransome.)

companies like Vitro or those that used it for ceramics.

Q. Yes, but that was known for some time.

A. That was always known, as long as I was in the business.

Q. When was it you realized the uranium had a value other than that?

A. When the Manhattan District came to us.

Q. Didn't you know this prior to 1941?

A. No, sir. The first time I knew it, regardless of dates, is when the Manhattan District came to us and wanted uranium and we, of course, our scientific people immediately said, "Oh, oh, it looks like they are after this. It looks like they are fishing some place." [2183]

But they kept us in the dark for two months before they would admit that it was to be used for war purposes, and they still would never admit that it was to be used for an atomic bomb.

The Court: What was the Manhattan District?

A. The Manhattan District was a group of officers under General Groves.

Q. Was it a war agency?

A. It was. General Groves got this group of officers and they were given the job and two billion dollars to produce the atomic bomb and it was the greatest secret ever kept. We never knew what the next fellow was doing, and the next fellow didn't know what anybody else was doing, just General Groves and a few of his staff knew what was going on in the whole picture, and for several months, to answer you, Mr. Alioto, they concealed the fact

(Testimony of Edwin D. Bransome.)

from us that it was for the war effort, but we certainly could not believe it was not, because here there were these uniformed officers coming into our business and talking about uranium and holding things secret.

Q. You knew uranium then had a value even though you did not realize what the value was, is that right?

A. I surmised it had a value if the government was going to buy it. The Manhattan District wanted to buy it. It was very secret. [2184]

Q. When that was bought, was there a corresponding increase in the price that you paid to the miner?

A. I don't recall the dates, but the increase certainly came on.

Q. Isn't it a fact that for two years or so the miners were not being paid for the uranium content of the ore?

Mr. Holland: If your Honor please, Mr. Alioto has filed a suit in Salt Lake City against these same defendants. This has nothing to do with this case, but he is trying to get some information for the other case. That is what this is all about.

Mr. Alioto: I submit, if your Honor please, here are two companies that had meetings in connection with the fixing of the ore price.

The Court: Now, that is not a fair statement to this Jury. There is no evidence that has been introduced yet that there was an agreement to fix prices.

(Testimony of Edwin D. Bransome.)

Mr. Alioto: If your Honor please, there is evidence from which the Jury can infer that there was an agreement to fix the price.

The Court: I don't know how much imagination the Jury has, but they may.

Mr. Alioto: I submit that again, that there again your Honor is being an advocate for the defendant.

The Court: No, I am not. [2185]

Mr. Alioto: Instead of an impartial judge. When the president of one company meets with the president of another company to discuss ore prices, your Honor?

The Court: This Court simply wants absolute justice done and I do not want inferences drawn from inferences. If you have something that you can base an inference on, that is all right, then you can infer.

Mr. Alioto: I think your Honor knows the cases on price fixing, and that is quite an unfair statement on price fixing, with which your Honor is very familiar.

Mr. Holland: If your Honor please, I object to this line of testimony on the ground it is immaterial in this case.

Mr. Alioto: We offer to prove at this point, so there is no question about it, that both companies for at least two years did not pay the miners for the uranium contained in that ore when they knew the value and were getting money for it themselves.

The Court: Objection sustained.

Mr. Holland: We didn't get paid for it, either.

(Testimony of Edwin D. Bransome.)

Mr. Alioto: I can't develop it apparently. We have no further questions, Judge.

The Court: Anything further?

Mr. Holland: I have nothing further.

Mr. Archer: I have no questions. [2186]

Mr. Holland: May Mr. Bransome be excused?

Mr. Alioto: Yes.

The Witness: What is that?

Mr. Holland: You may be excused, Mr. Bransome.

(Witness excused.)

The Court: May I ask, Mr. Holland, how many more witnesses you have?

Mr. Holland: One. This is our last witness.

Mr. Alioto: I think we can conclude this afternoon without question. I know that is a consummation devoutly to be wished by your Honor and the Jury and the rest of us.

The Court: The reason I ask the question is, as you know, I have been assigned for a definite time.

Mr. Alioto: We expect to conclude this afternoon, Judge. We discussed that earlier and I think we can go on schedule.

GUSTAF LAUB

a witness called by and on behalf of the defendant Vanadium Corporation of America, and being first duly sworn, testified as follows:

The Clerk: Will you state your name and address?

(Testimony of Gustaf Laub.)

The Witness: My name is Gustaf Laub. My address is Wellwyn, Riverside, Connecticut.

The Court: That is not Irish, is it?

The Witness: It wasn't this afternoon, up until this afternoon. [2187]

Q. Mr. Laub, during the period '38-'39 were you employed by Vanadium Corporation of America?

A. Yes, sir, I was.

Q. And how long had you worked for them prior to that time?

A. Since 1919 when the Vanadium Corporation first formed. I had been with its predecessor, the American Vanadium Company, since 1916.

Q. What position did you hold in the Vanadium Company of America on July 1, 1938?

A. I was assistant vice-president and general manager of sales.

Q. And what positions did you hold with the company after that date?

A. I was assistant vice-president, general manager of sales, until 1949, when I became general manager—when I became vice-president in charge of sales, and in 1952 I was elected a director of the corporation. I held those two titles, vice-president in charges of sales and director, if director is a title, until I retired last December.

Q. Mr. Laub, in 1938 and 1939 you were general manager of sales, is that correct?

A. Yes, sir.

Q. There is in evidence some correspondence relating to a request by Continental Ore Corpora-

(Testimony of Gustaf Laub.)

tion dated July 28, 1939, to buy vanadium oxide from Vanadium Corporation of America. Do you recall that incident? A. Yes, I do.

Q. Will you tell the jury what happened since most of it was by telephone conversation, and what the result was, and why?

A. Yes. During that period there were rumblings of war on the other side and a great deal of speculation going on, and we received a great many telephone calls, visits and letters from persons and companies and brokers of whom we had never heard before. Some of them didn't even know how to spell the name "vanadium."

Well, about that time we heard from the Continental Ore Company, and they had inquired for quantities, small quantities, I believe, of vanadium oxide for shipment domestically, and we told them what our policy was, that we sold—I think at that time they were inquiring for ferro-vanadium, also. We told them that our organization had its own selling department, and that it was our policy to sell our products through our own sales organization, due to the technical aspects of the subject.

Q. And on that basis you refused their request?

A. I refused to quote them for domestic.

Q. Did you quote them for foreign?

A. I believe I did. I quoted them foreign—I don't [2188] know whether it was just at that time or not, but it was within a short time I quoted them for export. I think the price I quoted them then was \$1.30.

(Testimony of Gustaf Laub.)

Q. I refer to your pencil memorandum (handing document to the witness).

A. Yes, this is it. This pencilled memorandum that I wrote, it says—

Do you want me to read it?

Q. All right.

A. (Reading.) "Phone Mr. Hirschland, quoted \$1.30 f.a.s. New York, freight and insurance. Today's rates allowed—"

I guess that is insurance rates—they were fluctuating up and down (continuing reading):

"—Stated Buffalo delivery requested—"

Gee, I wish I had written better (continuing reading):—

"—Advised of price too high and wanted domestic price quotation. Advised we had our own sales organization and did not sell domestically through brokers."

I wrote that on August 8, 1939.

Q. There is in evidence some letters, which I will read—they are very short.

On November 16, 1943, Vanadium Corporation received a letter from Continental Ore, Mr. Leir (reading): [2189]

"Would appreciate your offering us 10,000 to 15,000 pounds of V_2O_5 contained in vanadic acid per month. We would be ready to sign a contract with you for a fixed length of time."

On November 19th you replied (reading):

"In response to your inquiry of November 16 requesting quotation on ten to fifteen thousand

(Testimony of Gustaf Laub.)

pounds monthly of V_2O_5 contained in vanadic acid, we regret very much that due to our present commitments we are not in position to take on this additional tonnage at the present time.

"Perhaps if you were still interested at a later date and our situation changes we will be glad to look into the matter further at that time.

"Regretting our inability to be of serve to you at this time, we are

"Yours very truly."

Will you please state what the facts were in respect to—. In other words, you refused to quote on the basis that you were not in a position to take on the additional tonnage. Why were you not in a position?

A. What is the date of that, please?

Q. November 16, 1943.

A. I think vanadium was still under control at that time by the government. The situation was such that our reserves [2190] of vanadium were low and we had a rule of thumb within our own organization that if the stocks or inventories of vanadium pentoxide got below one month's supply we were in very dangerous and very short supply. We endeavored at that time, I believe, to maintain inventories of black oxide, or vanadium pentoxide, as it has been referred to, up to three months, in order to feel safe and sure that we would have enough intermediate product to make ferro-vanadium to supply our domestic customers principally.

(Testimony of Gustaf Laub.)

Q. Well, do you know how much you had on hand on that date?

A. Well, we had about—at that time we had about a month's supply of oxide.

Q. How much was a month's supply?

A. Well, at that time we were selling, oh, I would say an average of 250,000 pounds of contained V in ferro-vanadium, or anywhere from 150 to 250 thousand pounds. That would be in terms of vanadium oxide required to produce that 150,000, would be 300,000 pounds of contained V_2O_5 in oxide.

Q. (By the Court): That is by the month? Per month?

A. Per month, yes, sir.

Q. (By Mr. Holland): Well, now, you made an examination of your figures for the case in Denver and determined how much supply you had on [2191] hand at that time. Do you recall what that figure was? A. This is 1943?

Q. That's right.

A. That figure was, I believe, somewhere around 103,000 pounds of oxide. At that particular time we had less than one week's supply of V_2O_5 on hand for the production of ferro-vanadium. When I referred to it that way, I mean the black oxide.

Q. In your letter you state (reading):

"Perhaps if you were still interested at a later date and our situation changes, we will be glad to look into the matter further."

(Testimony of Gustaf Laub.)

As far as you know, did Continental Ore ever come back and ask you to quote again?

A. Not anywhere near that time, no. It must have been much later if they did.

Q. Now, 1940, there is evidence here—in April of 1940 I believe it was—that you refused to quote Apex Smelting Company. Do you know the basis on which you refused to quote Apex Smelting Company?

A. The same reason. We were short of oxide by our regular policy.

Q. Do you know what your oxide inventory was on that occasion?

A. On that occasion, I don't recall exactly on that date, [2192] but around that time I do know we had not more than a month's supply of oxide.

Q. There are two letters in evidence, Mr. Laub, which I will read. One directed to you from Continental Ore (reading):

“Gentlemen:

“As you know, the Apex Smelting Company of Chicago has been in the aluminum smelting business for more than 20 years. Last year they entered into the production of certain ferro alloys by the alumino thermic process and have created good facilities for this particular manufacture which, if necessary, could be easily enlarged. Would you be interested in farming out a certain quantity of vanadic acid and allow us to convert it for your account to a low-carbon ferro-vanadium? We shall be awaiting the pleasure of your reply to the above

(Testimony of Gustaf Laub.)

suggestion and hold ourselves at your disposal for any personal discussion you might like to have on the subject."

To that you replied, on June 18th (reading):

"In response to your letter of June 16th, wish to advise you that we would not be interested in your proposition of furnishing you vanadic acid for conversion into ferro-vanadium, as all of our production is consumed in the manufacture of our own products. We thank you, however, for having referred this matter to us."

And then on the 21st there is a further letter from Mr. Leir to you (reading):

"We have received your letter of June 18th. Just for the record, may we state again that we did not ask you to furnish us with your vanadic acid for our own use. We offered you our facilities in Chicago for the purpose of converting your material for your account on a toll basis. In other words, we would return the finished ferro-vanadium to you."

Now, will you state what was involved in your making a decision not to farm out this ferro-vanadium?

A. Yes. We never had any difficulty in refining the final product of ferro-vanadium. We had ample facilities to take care of that. Our principal difficulty was in keeping abreast of our requirements, raw materials, of which we considered vanadium pentoxide one.

Does that answer your question?

(Testimony of Gustaf Laub.)

Q. In other words, you had ample facilities for converting oxide into ferro-vanadium?

A. That is right, sir.

Q. There is in evidence and has been frequently referred to, and was again with Mr. Bransome, certain memoranda from you to—written by you in connection with a call which a Mr. [2194] Christiansen, vice-president of the Apex Smelting Company, made on you originally on February 20, 1942. On that occasion you wrote a special report.

What is a special report?

A. We had different types of reporting. The general report, that went to as many as 20 people throughout the organization. A special report was one that would probably get into the hands of only persons that were required to have the information. That was more for the benefit of the stenographer, the secretary writing the report, so that she wouldn't make too many copies for circulation. So the special report went only to possibly four, five or six people, whereas the general report was circulated all over the organization.

Q. Mr. Laub, did you know Mr. Peterson prior to the time he called on you on this occasion?

A. Mr. who?

Q. Mr. Peterson.

Mr. Alioto: Christiansen.

Mr. Holland: Christiansen. Pardon me.

A. I only met him very slightly, oh, somewhere around in the trade, probably, probably a metal show or convention somewhere. About all I knew

(Testimony of Gustaf Laub.)

was a Mr. Christiansen when he called. I didn't know just exactly what company he was connected with at the time, until his card was sent in to me, and it showed that he was vice-president. [2195]

Q. (By Mr. Holland): Of Apex?

A. Of Apex, yes, sir.

Q. Did you know a Mr. Singer or Mr. Lippa of that company at that time? A. No, sir.

Q. Did you know anyone at Apex other than Mr. Christiansen?

A. No one else except Mr. Christiansen. He came in out of the cold.

Q. Had you ever done any business with him before? A. None whatever.

Q. Had you ever discussed in any way with anyone at Apex their entry into the ferro-vanadium business? A. Not at all.

Q. Did you know anything at that time—prior to the time Mr. Christiansen came in—about their decision to go out of business?

A. Never heard of it.

Q. Did you in any way, when you were talking with Mr. Christiansen, try to influence him to go out of the business?

A. I listened to his story.

Q. Is that about what it amounted to?

A. That is so. I reported it the best that I recalled.

Q. Now, several times in these memos the fact is referred to that they are going to tell you what the vanadium oxide [2196] sources that they have

(Testimony of Gustaf Laub.)

been drawing on, who their suppliers were. There is a statement in the last memorandum which Mr. Alioto recently read (reading):

“——; that he further stated he would furnish us with the names of all of their suppliers of ores and oxide, the principal ones apparently being Shattuck Chemical Company and Nisley & Wilson. He appeared to be most anxious that we obtain these raw materials rather than the possibility of Mr. Leir's getting them and continuing in the vanadium business.”

Did you in any way—did you ask him for these?

A. I did not. He was trying to make a sale, and he was throwing forward all the inducements he could, thinking that might be one.

Q. Did he indicate to you why he didn't want Mr. Leir to get this oxide, or——

A. No; he seemed to be sore at Mr. Leir about something, but I didn't know what it was at the time, except what he told me.

Q. Mr. Laub, have you ever made any agreement with anyone in the Union Carbide organization——

A. I have not.

Q. ——concerning—let me finish.

A. Oh, pardon me.

Q. You never made any agreement of any kind, is that [2197] correct? A. That's right.

Mr. Alioto: He knows the script.

Mr. Holland: Well, he knows he hasn't made any agreement, if that is what you mean.

(Testimony of Gustaf Laub.)

The Witness: I have heard that question asked so many times, your Honor.

Q. (By Mr. Holland): You were a witness in the Denver case, weren't you, Mr. Laub?

A. Yes.

Q. You have heard this a good many times. Have you ever made an agreement with anyone in the Union Carbide organization respecting the sale, marketing, distribution of vanadium products of any kind, or the prices to be set thereon?

A. Have you finished?

Q. Yes.

A. I never did.

Q. Have you ever heard of any such agreement being made——

A. I never heard of——

Q. —— between Union Carbide and Vanadium Corporation of America?

A. I never did.

Mr. Holland: That is all. [2198]

Q. (By the Court): When did you first learn that you were charged with that?

A. In Denver. In Denver, when the Denver trial came up.

The Court: We will take a recess at this time.
(Short recess.)

Cross-Examination

Q. (By Mr. Alioto): Mr. Laub, on your direct examination I think you indicated that the first call from Mr. Christianson was a personal call

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(Testimony of Gustaf Laub.)

rather than a telephone call, is that right? You said something about the presentation of a card.

A. No, he presented a card in our outside office.

Q. Yes.

A. And that was sent in to me, that a Mr. Christianson was calling. On that card I noticed he was vice-president of a company.

Q. I take it he had made no advance telephone appointment with you; he just walked in, is that it?

A. That I don't recall.

Q. In any event, during the conference he told you they were going out of the vanadium business and he had certain equipment and some small stock of oxide that he wanted to sell, is that it?

A. I think there was some magnesium.

Q. Magnesite bricks, were they?

A. Yes.

Q. Did you know at the time what the magnesite bricks were used for in the vanadium process?

A. I don't think he said bricks, I think he said magnesite. Oh, yes, I had known for years that magnesite was [2199] used to line pots.

Q. To make the crucible?

A. Refractory.

Q. Did he tell you at that time he had approximately 50,000 pounds of vanadium oxide on hand?

A. That is what I reported and that is what he must have told me.

Q. Was 50,000 pounds an amount of vanadium pentoxide in February, 1942, you felt it essential to get your hands on?

(Testimony of Gustaf Laub.)

A. I didn't feel it essential. I reported that. I knew we were looking for oxide.

Q. Then he came in and tried to make a sales pitch to you, is that what happened?

A. I didn't know at the time what kind of a picture he was painting. It appeared to me that he was trying to sell something.

Q. When he left, did you care whether he got in touch with you again or not?

A. Well, that is a strange way to put it, I believe, but when he left—yes, I wanted him to get in touch with us, or we in touch with him, because I knew at that time we were looking for oxide. We were getting all the oxide we could. I knew we were short of raw materials of one kind or another of which magnesite was a very important one.

Q. As a matter of fact, he dropped it, didn't he? You [2200] didn't hear from him, and then you initiated a move to get him in touch with you, isn't that what happened?

A. I told my district manager in Chicago, I said, "Get hold of Apex. They were in here. They were going to give me some information. Don't make too much about it, but see what the answer is."

Q. (By the Court): What did he tell you about giving you information when he left you?

A. When he left me he said he would furnish me with a list of how much magnesite they had on hand, exactly how much vanadium pentoxide, and

(Testimony of Gustaf Laub.)

the equipment that they wanted to sell. He didn't know what the equipment was.

Q. You did not hear from him for about two or three weeks, isn't that what happened?

A. It could be.

Q. And then you initiated a move to keep the contact alive?

A. I asked our Chicago district office to call him up.

Q. At that time was there any discussion that he would give you information he had about his supply contracts with Nisley & Wilson out in Colorado, with Shattuck, and others?

A. I don't know just how he put it. Those contracts were sort of Greek to me, the supply contracts, but I reported exactly. The way he put it to me is the way I understood it. [2201]

Q. You were interested in getting that information, weren't you? A. Which information?

Q. The information about his supply contracts, where his source of supply was.

A. He promised to give me further information, or he said he would. He volunteered that, and I asked him—I followed it up through our Chicago office and told him we hadn't heard from him.

Q. Why would you write a special report of this kind to the president of the company?

A. That was a regular report. We called it special merely for the stenographer's purpose of circulating it to a limited few people, rather than to the whole organization.

(Testimony of Gustaf Laub.)

Q. Why would you take a matter involving 50,000 pounds of oxide and some magnesite—

The Court: Isn't that an office matter, now—why they would do it, if they did it?

Mr. Alioto: I want to know why he takes up a matter like this with the president of the company, in view of the somewhat casual interpretation he is putting on it now, if your Honor please.

The Court: I think you are going too far in your questions. That was a matter that you handled in your own office. [2202]

The Witness: Yes, your Honor.

Q. (By Mr. Alioto): You took it up with the president of the company?

A. With everyone else in the company of any consequence that might be interested in such a proposition. The purchasing agent probably got a copy, the vice-president in charge of sales probably got a copy, the production manager probably got a copy, and the key people in the organization there got copies.

Q. Isn't it a fact that you knew Mr. Bransome would be interested in the fact that the Continental Ore Company and the Apex Smelting Company would be going out of the ferro-vanadium business?

A. I wouldn't have known of it except it was such an unusual thing, a small producer that we had heard of only indirectly was going out of the vanadium business and offering its facilities and materials that they wanted us to purchase and take off their hands.

(Testimony of Gustaf Laub.)

Q. What do you mean you only heard about them indirectly? Didn't you make it your business to keep in touch with what they were doing?

A. Whenever we heard from them in the trade we did. We didn't follow Continental Ore or Apex any more than we followed any other person—broker, producer or prospective producer. We didn't single them out at all. [2203]

Q. You were interested in their activities because they were competitors of your company, weren't you?

A. I wouldn't say they were highly competitive in any manner, because the amount of material that they offered us—we heard of, the information we heard, it was just spasmodic, here, there and a few other places, and we were out, naturally, to get all the information we could about them, or any other company that might have been offering vanadium on the market.

Q. Isn't it a fact that during this period of time you were aware of the fact that it was the only competitor in the business, the only producer of ferro-vanadium in the business, outside of the Electro Metallurgical Company and yourselves?

A. We would never compare the two.

Q. I am not asking you to compare the two. I am asking you whether you knew it was the only competitor in the ferro-vanadium business that had arisen since 1938.

A. There was so little material offered by them, or we heard there was so little material offered by

(Testimony of Gustaf Laub.)

them, that, while we were interested, we didn't go out of our way too much, about them or about anyone else.

Q. Mr. Laub, why would you write this language in a special report on April 14th:

"With reference to the writer's previous report of February 20th, Mr. Christiansen of the above [2204] company called again yesterday stating that they had now gotten their vanadium situation straightened out,"——

And then you say, in the second to the last paragraph:

"He further stated he would furnish us with the names of all their suppliers of ores and oxide, the principal ones being Shattuck Chemical Company and Nisley & Wilson. He appeared to be most anxious that we obtain these raw materials rather than the possibility of Mr. Leir's getting them to continue in the vanadium business."

Why would you make a special report like that?

A. Would you please read the first sentence there?

Q. Yes, the first sentence of the letter reads:

"With reference to the writer's previous report of February 20th, Mr. Christiansen of the above company called again yesterday stating that they had now gotten their vanadium situation straightened out, and that they had definitely concluded to dismantle their vanadium plant at once and go out of the vanadium business permanently."

A. That is sufficient.

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(Testimony of Gustaf Laub.)

Q. If you were not interested in those folks at that time——

A. They were merely following up the other report he had made, that is all. [2205]

Q. You had not dealt with this company commercially, had you—the Apex Smelting Company—before this time? A. I, personally? No.

Q. Your company, the Vanadium Corporation of America. A. I don't think so.

Q. You had not bought anything from them?

A. I wouldn't know that, because if there were any purchases—they were purchasers of secondary aluminum, and we were users of aluminum, some secondary, but mostly primary aluminum.

Q. What is secondary aluminum? Scrap?

A. Scrap aluminum remelted.

Q. The primary aluminum at that time was selling at about 15 cents a pound?

A. I don't know.

Q. You don't recall that? A. No.

Q. You paid a pretty high price for this scrap aluminum you bought from them, didn't you?

A. I don't know if we bought any from them. Scrap aluminum?

Q. Yes. Didn't you make a purchase from them shortly after these interviews, Mr. Laub?

A. I wouldn't know that. I turned Mr. Christiansen over [2206] to our purchasing department when he was talking to me about things we might want to buy.

Q. You heard Mr. Bayer testify there was a

(Testimony of Gustaf Laub.)

sale of about 200,000 pounds of aluminum, didn't you?

A. Yes, but that was the first I heard about it.

Q. That was the first you heard about it?

A. Yes.

Q. But you turned him over to your purchasing department at this time, didn't you?

A. Yes, sir.

Q. You say:

"We had an interesting discussion concerning low copper grained aluminum, which they produced and released."

A. That is why I turned him over to the purchasing department, because low copper aluminum was desirable.

Q. Was it customary for you to report to Mr. Bransome purchases of aluminum, 50,000 pounds of oxide?

A. Oh, yes; yes.

Q. Mr. Laub, isn't it perfectly clear from this correspondence that the most important thing you were interested in was the fact that they were going out of the vanadium business?

A. I reported the whole conversation.

Q. Your company also produces—in addition to vanadium, [2207] your company sells ferro-chrome, doesn't it?

A. Yes.

Q. And sold it for many years?

A. Yes.

Q. What is the approximate proportion between your sales of ferro-chrome and your sales of vanadium?

A. Now?

Q. No; during the 1940's.

(Testimony of Gustaf Laub.)

Mr. Holland: Your Honor, I do not believe this is material.

The Court: I don't see its materiality, but he can answer if he knows.

A. I can't give you the tonnages that were produced, or their ratio, because I can't compare ferro-chrome with ferro-vanadium.

Q. (By Mr. Alioto): Did you sell more ferro-vanadium than ferro-chrome?

A. I don't think so at that time. What do you mean, per ton, or what?

Q. Per pound.

A. Per ton or per pound? Per pound, we sold more ferro-chrome than ferro-vanadium—a lot more.

Q. When did you get into the ferro-chrome business?

A. We got into the ferro-chrome business in 1923, I believe. [2208]

Q. Did Union Carbide have anything to do with getting you in that business?

A. Not at all, no sir. We bought out an organization, the U. S. Ferro-Alloys Company, with which Union Carbide had no connection, so far as I know.

Mr. Alioto: We have nothing further, if your Honor please.

Mr. Holland: Nothing further.

This defendant rests.

(Defendant Vanadium Rests Case in Chief.)

Mr. Archer: I have just one or two things, but nothing of this witness.

The Court: Very well, you may step down.

(Witness excused.)

The Court: The Court is a little interested in what these retired men are going to do over the week-end.

A Witness: I am going home, your Honor.

Another Witness: My wife is with me.

Mr. Archer: Your Honor, the first is a small matter. In yesterday's testimony Mr. Bigler—and I do not mean to be criticizing the reporters—but occasionally, instead of the name "Garbutt," which, you will remember, was the owner of those claims, the name "Carbide" appears. I thought that might refer to us. And the only pages that I [2209] could find it was on page 1994, 2004, and 2007.

Mr. Alioto: We have no objection to that being physically changed, Mr. Archer. There is no problem about that.

Mr. Archer: The other thing I forgot, I took the deposition of Mr. Gifford of the Atomic Energy Commission showing the amount of vanadium oxide by month that we produced for them, and I won't offer the whole deposition, but I will just offer his statement of what it was.

Mr. Alioto: I have no objection to that.

Mr. Archer: I can't find the original in the file. It came in this way: It was put in the flat file, instead of separate.

(The deposition referred to was marked Defendant U Exhibit 5-T in evidence.)

[See Book of Exhibits.]

Mr. Alioto: If your Honor please, we have no testimony by way of rebuttal. However, solely for

the purpose of completing this record, it is the belief of this plaintiff that the testimony of the chief officers of the Union Carbide and of the Vanadium Corporation, in connection with the presentation of their defense, has made relevant those documents prior to 1938 which show the nature of the 1938 agreement. I recognize it is only a formal gesture. I know your Honor's attitude on it. But solely for the purpose of completing my record and as a matter of rebuttal we now re-offer all the [2210] documents dated prior to 1938, including the MacGuigg Report, which the Court, up to this point, has excluded. I anticipate the Court's ruling, but I am making it as a technical matter.

Mr. Holland: Same objection.

Mr. Archer: Same objection.

The Court: The motion will be overruled—I mean sustained, and the Court is adhering to its former ruling.

Mr. Alioto: Except for that offer of proof, at this point, if your Honor please, we have no further evidence to present.

I do not know how your Honor handles the motion to apply the evidence in this case, but we have submitted certain instructions on the co-conspiracy rule. I take it that will be handled by the Court as a matter of instruction?

The Court: If you gentlemen will come into my chambers as soon as we adjourn we will discuss those matters.

The jury may be excused until Monday morning at ten o'clock.

(Whereupon the jury were excused until Monday, June 23, 1958, at 10:00 o'clock a.m.)

(The following in chambers, outside the presence of the jury.)

(Informal discussion as to proposed instructions.)

Mr. Alioto: The language I would propose is that there has been reference to this case of a prior proceeding by the Government of the United States in Denver. I instruct you that this case has absolutely nothing to do with your deliberations, and you are free to arrive at a verdict without reference to the result in that case.

Mr. Holland: I am sure we had a statement at the beginning to be submitted to the jury and I think it points out the difference between the proof beyond a reasonable doubt and upon which—

Mr. Neaher: We discussed that.

Mr. Alioto: Why do we need anything more than this? This is a correct statement of the law.

Mr. Holland: Let's see if we can't agree on something by Monday morning.

Mr. Alioto: How about that language? We don't have too much time between now and Monday morning.

Mr. Holland: We have got it all written out. We can give it to you Monday—we can give it to you tomorrow.

Mr. Archer: The only thing I would suggest, if you are putting in a statement with regard to the Denver case, that there also has been reference to a

government indictment [2212] and that indictment was dismissed by the government.

The Court: Do you want any reference made to the final judgment in that case?

Mr. Alioto: Well, reference has already been made to that final judgment. I think the Court should simply say the result there has no probative value in this case.

The Court: I didn't understand that any statement had been made as to the final judgment.

Mr. Holland: Yes. I made that in my opening statement.

Mr. Alioto: And we objected strenuously to that.

Mr. Holland: I made that in my opening statement, and your Honor let me do it because you had given Mr. Alioto a free rein to say whatever he wanted, and I didn't remember that Mr. Alioto objected.

Mr. Alioto: Oh, I objected all right, objected on the ground that the measure of proof was different and the jury might be led to believe, because there was an acquittal in the government case, there ought to be an acquittal here.

Mr. Holland: As I recall, you said: "Well, if Mr. Holland is allowed to say that, I think the Court should tell the jury the difference in the quality of proof." That is my recollection. [2213]

Mr. Alioto: I objected to it being said.

The Court: Well, I will let you deliberate over that until Monday morning and see if you can't agree on a proper instruction or to eliminate any instruction.

Mr. Holland: We will give you our proposed language.

Mr. Alioto: Tomorrow?

Mr. Holland: Yes.

Mr. Alioto: Fine.

(General discussion.)

Mr. Archer: I will make a motion for the defendants I represent and for each of them, a motion for a directed verdict on the same grounds that I had previously stated at the close of the plaintiffs' case, and I will also make a motion for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief, again on the same grounds as I stated at the close of the plaintiffs' case, and as I stated in a memorandum which I filed.

Mr. Neaher: On behalf of the defendant Vanadium Corporation of America, I, too, renew the motion for a directed verdict on the entire case upon the same grounds as stated before the Court at the end of the plaintiffs' case.

The Court: And the Court will reserve any ruling on the motions.

Mr. Alioto: If your Honor please, I think there [2214] is a technical matter. I want to be sure there is no problem about waiver here, that before that motion, in connection with the conspiracy charges, some cases say that you have to make a motion to apply. Before that motion is made, that is, to apply the evidence offered against one defendant against all the defendants, under the instructions of the Court, under the co-conspiracy rule—

and I take it the Court proposes to give those instructions on the co-conspiracy rule. I do not know whether the Court wants me to make that motion to apply or simply assume our proposed instructions on the co-conspiracy rule sufficiently constitutes a motion to apply.

The Court:

Mr. Alioto: I would think so, too, but I don't want anybody saying later on in an appellate court that they do not and there should have been a formal motion to apply all the evidence.

The Court: I do not know of anybody in connection with this case who is indicating any desire to waive anything.

Mr. Alioto: That is about right, Judge, and that is why I do not want to start now. I think formally I should make the customary motion in connection with these cases.

I would move at this time, if your Honor please, that the evidence heretofore offered as against one defendant and not the other be made to apply to the other defendant as well [2215] under instructions to be given by the Court on the co-conspiracy rule, that such declarations are not receivable or such acts or evidence are not receivable against the defendant against which they were not offered until the jury is satisfied that there is prima facie evidence of combination and conspiracy.

I would point out to the Court in connection with that rule that the cases of Standard Oil against Moore and the Flintkote case, to which reference has been made before, indicate the somewhat broad

scope the Ninth Circuit has given to what constitutes prima facie evidence of conspiracy, joint action or joint refusals, uniform prices over a long series of time in the light of economic factors with respect to cost of production, and so I would at this time make that motion to apply all the evidence in the light of the Court giving an instruction under the co-conspiracy rule. I think we ought to submit such an instruction and we will do that sometime tomorrow, if the Court will be available to receive that proposed instruction.

The Court: You can submit it at the office tomorrow at 10:00 o'clock. I do not see how that is really necessary in the face of the instructions.

Mr. Alioto: All right.

The Court: I think this, that after you have read the instructions, if you deem it necessary, then you can make that as an additional requested instruction. [2216]

Mr. Alioto: Fine. Then do I understand from counsel that they are making no point that the motion has to be acted on at this time?

Mr. Archer: No, I am making no point of that. The only thing I object to is that you keep citing the Moore case and the Flintkote case and those cases the defendants want.

Mr. Alioto: I will tell you what those decisions are. Those decisions have been described here as decisions for the plaintiff for the first 21 pages and then on the 22nd page the judgment is reversed.

Mr. Archer: I will be glad to settle for that kind of decision. In any event, Mr. Holland, I take it,

the attorneys for the Vanadium Corporation of America are making no point that the motion to apply should be acted upon at this point?

Mr. Holland: I would say so.

Mr. Archer: Just so the record shows we oppose the motion on the ground that no prima facie evidence of conspiracy has been shown.

Mr. Holland: We likewise oppose such a motion.
Mr. Alioto: It will be understood that the motion will be in effect ruled upon by the nature of the instruction given by the Court under the co-conspiracy rule.

Mr. Archer: Yes. [2217]

Mr. Holland: Yes.

Mr. Alioto: Is there any objection to our withdrawing the exhibits over the week-end so we both have access to them, so we won't have to be shifting papers before the jury?

The Court: Whatever arrangement you make among yourselves will be satisfactory.

Mr. Archer: We will take the plaintiffs' exhibits and you take the defendants' exhibits.

Mr. Alioto: That is as good an arrangement as any.

The Court: Of course, if you read all those exhibits there won't be too much time for argument.

Mr. Alioto: No. We do have a problem. Your Honor remembers the statistical exhibits, the first eight or ten statistical exhibits: we have statistics running from 1933 up to 1949, and the Court admitted those exhibits only so far as they relate to statistics after January 1, 1938. How do you want

to handle that? Do you want to cover them up or do you folks want to retype the exhibits and leave out the 1933 to 1938 years?

Mr. Archer: I do not want to retype the exhibits.

Mr. Alioto: Suppose we physically cover up the years in question. Would that be agreeable?

Mr. Archer: Just so when they go to the jury [2218] the prior years are not visible.

Mr. Alioto: And that is the only thing that I think has to be done physically with the exhibits. We will do that on that basis. We will get some kind of paper and paste it over, some kind of plastic transparent paper.

Mr. Archer: I will tell you something that is easy that I use. That is Mystic Tape.

(Thereupon an adjournment was taken until Monday morning at 10:00 o'clock) [2219]

* * * * *

Mr. Alioto: If your Honor please, on behalf of the plaintiff, we have had an opportunity to look over the Court's instructions, and we honestly do not feel that under the somewhat stringent decisions of this Court we would be making our record complete here simply by writing certain things in the margin, because the Courts, as I view the decisions, enjoin upon us the necessity of calling specific objections to the attention of the Trial Court before the instructions are given. I think I can very hurriedly go through these and make a record of the objections which the plaintiff has to the instructions.

I also take it, gentlemen, that it will be deemed

that these objections are being made after the instructions, in fact, have been given?

Mr. Neaher: That is satisfactory.

Mr. Archer: That is satisfactory.

Mr. Alioto: Do all counsel agree on that?

Mr. Neaher: We agree.

Mr. Archer: Yes. [2221]

Mr. Alioto: Therefore we shall not be in technical violation of the rule that apparently requires it to be done at that time.

With respect to the Court's proposed instructions, our first objection is to some of the language in connection with Instruction 3, in which it states—and perhaps we may be partially responsible for this—in the last two lines of page 4:

“Plaintiffs were eliminated from the vanadium industry by this alleged violation of law.”

Actually, I think the evidence shows that the plaintiff always kept intact their organization, which dealt very extensively in other ferro alloys and other ores and other minerals. So to the extent that they have an organization available to operate in the business, I do not assume that they were totally eliminated. And I just wonder if the addition of the words “virtually eliminated” would cover that factual difference between this language and what I think the record discloses.

The Court: I do not see any objection to that—“virtually eliminated.”

Mr. Alioto: If your Honor please, with respect to Instruction No. 4, the first paragraph of that instruction, we have a serious objection to the Court

characterizing this as a brokerage and jobbing business only. We think in the light of [2222] this record, when a man comes to an organization and makes a joint venture with that organization, such as the Apex Company, under which he gives that organization a certain know-how in connection with the production of ferro-vanadium, and he gives them certain process secrets, which apparently are so good that they are ultimately imitated in America—they were not secrets in Europe; they were well known in Europe, where most of our steel art comes from, anyway—when that man goes out and undertakes to get the material supplied by the extensive effort the plaintiff here made, and encouraging the independent mills, and paying for the materials on the basis of advanced deposits in banks, that that kind of activity I do not think is properly characterized as a brokerage and jobbing business. The Court did eliminate from the evidence the proper testimony with respect to the exact nature of the plaintiff's business, which is reflected in its profits and losses for each of the years in its total mineral alloy and ore business, and those statements reflected on their face something like five percent of the plaintiff's entire business is commission business, so-called, and we think in view of that, the Court having excluded that testimony, it should not characterize the plaintiff's business as a brokerage or a jobbing business.

The Court: Isn't that what you stated in your complaint? [2223]

Mr. Alioto: No.

Mr. Neaher: We would agree to the elimination of the words "brokerage and jobbing," so it would read that part of their business concern was vanadium products.

Is that agreeable, Mr. Alioto?

The Court: How is that, now?

Mr. Neaher: Strike out the words "brokerage and jobbing of."

Mr. Alioto: It is line 2 of page 5. Eliminate the words "brokerage and jobbing of."

Mr. Neaher: Is that agreeable, Mr. Archer?

Mr. Archer: Yes.

Mr. Alioto: As I indicated, we may well, in some of our earlier pleadings, have led the Court into this language, but we think the record having been made, our proposed instruction was as follows:

"The plaintiff is and has been engaged in the business of arranging for the manufacture and distribution of ferro alloys."

The defendants added the brokerage and jobbing.

Mr. Holland: If we can agree on that change, why don't we do it that way?

Mr. Alioto: Let the jury determine what the present business is.

Mr. Holland: That is correct. [2224]

Your Honor, we have agreed on this.

The Court: What it is you would strike out?

Mr. Alioto: Strike out "brokerage and jobbing of."

The Court: Just strike out the words "brokerage and jobbing of."

Mr. Neaher: If Mr. Alioto will permit interrup-

tion, with respect to Instruction No. 4, it would be our belief here that under the ruling of the Court with regard to the immateriality of the Atlas Steel's evidence in this case, and, indeed, with regard to the failure of the proper basis for the proof under 5, that Paragraph 4 and 5 should come out.

The Court: The only reason I included them is because that is part of the allegation in the complaint, and No. 4 is merely a brief recitation of the allegations of the complaint. I have covered 4 in No. 4 by specific instruction.

Mr. Neaher: We recognize that. We thought possibly, if your Honor agreed with your view, that the complaint has virtually been amended by your Honor's ruling, that that later instruction would be unnecessary. I think it is Instruction 42.

Mr. Alioto: The state of the record on that is there is some testimony about Atlas Steel, and some testimony that they had Atlas as a customer, and they did not have them as a customer, but the hiatus is our alleged reason why they lost the customer. But there is evidence in the record on [2225] Atlas—a good deal of it.

The Court: I believe it would be safer, gentlemen, to leave this in, and then have the specific instruction.

Mr. Neaher: Very well.

Mr. Alioto: In connection with that same paragraph, if your Honor please, we are also alleging that the plaintiff bought certain oxide and certain ferro-vanadium from the defendants at prices which were fixed by agreement, and we feel there is

an item lost in that evidence. We had a purchase in 1943, for example—in June of 1943—of 10,000 pounds of oxide, which was sold to us by the Electro Metallurgical Company. That price was \$1.10. Your Honor may remember the dispute about price, the \$1.10 and \$1.15. It is our contention that the \$1.10 price was fixed by agreement, and the market price should have been the same price that they charged the Vanadium Corporation of America three or four years before when the price was still \$1.10. There was no change in the price structure during that period.

The Court: That is a matter of evidence.

Mr. Alioto: We do make that claim, that we are entitled to that difference, and also that claim in connection with the \$75,000 purchase of vanadium at a later period of time, that we purchased that at a price which was fixed by agreement.

The Court: That is a matter of evidence. [2226]

Mr. Alioto: So long as we are not inhibited.

Mr. Archer: There is no evidence of price at which you purchased.

Mr. Alioto: Yes, there is. We have your price list, what you charged everybody, and we have the final amount, and we think we can take one-fifth of that final amount, claiming that the market price should have been one-fifth lower, according to the evidence given by Mr. Remmers, Mr. Priestley, and Mr. Burwell.

In any event, the big item of damages is not mentioned in this Instruction No. 4, and that is the joint refusal of both defendants to deal with us.

The Court: That is a matter of evidence.

Mr. Alioto: All right, so long as it is the understanding this statement of claims is not exclusive, then we may argue to the jury.

The Court: Yes, that is right.

Mr. Alioto: We would further object, if your Honor please, to the last paragraph of Instruction No. 8, which is on page 8.

The Court: What is your objection?

Mr. Alioto: Our objection is that the Court should go further in connection with its statement that it not consider certain evidence against certain of the defendants, and go on to say: [2227]

"* * *, subject to the rule on declarations and acts of co-conspirators as I shall hereinafter give it to you."

The Court: The Court has stricken out evidence previously on the matter—"You are instructed you are not to consider such evidence for any matter or for any purpose."

Mr. Alioto: No objection to that sentence.

The Court: "Where the Court has advised you certain evidence is to be considered with relation to a particular defendant, you may not, of course, consider the evidence in relation to any other defendant."

Well, now, you couldn't consider, unless they were a part of the conspiracy.

Mr. Alioto: Subject to the co-conspiracy rule as you later give it to them.

The Court: That is later covered fully.

Mr. Alioto: We object to the last paragraph of Instruction 10 on page 9.

The Court: "Each defendant is entitled to individual consideration of the evidence as applied to it and determine whether that particular defendant participated in any combination or conspiracy."

Mr. Alioto: Yes. We think the statement should also be made "subject to the co-conspiracy rules hereinafter stated."

* The Court: I think that is covered. [2228]

Mr. Alioto: Perhaps it is covered in that fashion, although we think it ought to be made clear at that point.

With respect to Instruction 20 on page 15, this paragraph in general does not permit the jury to find, in our view of it, that the Defendant Union Carbide, or that the Union Carbide group of defendants standing alone may have violated both Section 1 and Section 2. We think that a 75-percent control of the oxide production plus elimination of independent mills pursuant to a policy of elimination, that that, standing alone, under the Alcoa decision, constitutes a violation of Section 2, regardless of what the Vanadium Corporation may or may not have done.

The Court: Suppose Union Carbide owned all of them?

Mr. Alioto: Union Carbide might, if it owned it all, not necessarily, but might be found guilty to have monopolized by itself, regardless of V.C.A. But as I read this instruction——

The Court: *Let us read the instruction:

“The plaintiff’s complaint is brought under the anti-trust laws, in so far as this action is concerned—unless there has been agreement, combination or conspiracy among two or more parties”——

Mr. Alioto: That is our objection, right there—among two or more persons. I think the U. S. Vanadium [2229] Corporation, standing alone, can be found to have violated the anti-trust laws.

The Court: I can’t agree with you.

Mr. Alioto: That is our objection. In 22 the Court implies one defendant alone, namely, the United States Vanadium Corporation, cannot be found to have violated Section 2. It seems to me **to require an agreement** between U. S. Vanadium Corporation and somebody else. It is our view that one company which has 75 percent of the oxide and has excluded independent sources, and has excluded that pursuant to a policy to control the Plateau, and has available 90 percent of the available accessible ore deposits on the Plateau, that one company can be guilty of monopolization standing alone.

The Court: “It is in no respect a violation of the law that a number of individuals or corporations, each acting for himself or itself, may own or control a large part, or even of a particular commodity, or all of the business in a particular commodity.”

Is that objectionable?

Mr. Alioto: Yes, because then you couple it with the idea that you have to have at least two people to constitute a violation of Section 2.

The Court: That instruction is taken verbatim

from the instruction that was approved by the Supreme Court in the divider case. [2230]

Mr. Alioto: Yes, I understand, if your Honor please, that it is possible for somebody to have 100 percent under certain circumstances. If there are two factories, one factory having 50 percent and another factory having 50 percent, and one factory burns down, the factory with the 50 percent has a monopoly.

But, your Honor, it goes on to say that the essential element of monopoly is the existence of a combination or conspiracy, which implies there must be two people.

The Court: That instruction is taken from that case.

Mr. Alioto: In that case you had four or five tobacco companies, any one of which constituted a monopoly standing alone. That is not the case here. You think the United States Vanadium Company, standing alone——

The Court: I can't agree with you. Are you objecting?

Mr. Alioto: I object. The instruction does not permit the jury to find the United States Vanadium Corporation, standing alone, could have violated Section 2, if other things had happened.

The Court: You are objecting to what part?

Mr. Alioto: The whole instruction, in so far as it comprehends that U.S.V., standing alone, could not have violated Section 2 of the Sherman Act. We think it did. We [2231] think the evidence in this case discloses such a violation.

In that connection, if your Honor please, we have our Instruction No. 8, which is also taken from the tobacco company case, and which recognizes that a single corporation can violate Section 2, and we believe that is the proper instruction.

The Court: I have given you an exception to that.

Mr. Alioto: Yes, I understand, if your Honor please. I wanted to make this record clear.

With respect to Instruction No. 24, your Honor stated that the law recognizes the right of any trader or manufacturer in a private business freely to exercise his own independent discretion as to the parties with whom he will deal or refuse to deal.

We think under the decisions of the Supreme Court, if your Honor please, that the jury could well find that the United States Vanadium Corporation, standing alone, with 75 percent of the domestic oxide production and 90 percent of the control of the Colorado Plateau, must supply independents.

The Court: Why should it be?

Mr. Alioto: Because it constitutes a monopoly standing alone.

The Court: No.

Mr. Alioto: That is the reason for it.

The Court: Do you want an exception to that?

Mr. Alioto: Yes.

With respect to Instruction No. 26—

The Court: "The Court instructs you if the defendant acted on the basis of his own best judgment, no inference of conspiracy can be drawn

against that defendant, even though, after weighing all the circumstances, your personal opinion might be that the defendant's judgment was incorrect. You cannot find that the defendant entered into unlawful agreement or conspiracy because you disagree with their business judgment."

Mr. Alioto: My objection to that, if your Honor please, is that if business judgment, as has been testified in this case, led to the exclusion of competition and the prevention of competition, that that business judgment will not immunize these defendants. That is my objection.

The Court: Exception to 26.

Mr. Alioto: Your Honor may recall a few times the witness answered that "This was our sound business judgment."

I said, "What was the reason for the business judgment?"

He said, "To exclude competition."

And that is the evidence we are referring to.

The Court: All right.

Mr. Alioto: Your Honor, in connection with [2233] Instruction No. 32 on page 22, in connection with that instruction, your Honor gives an instruction which comes out of certain cases about a standardized product. We do not think there is any standardized product here, nor is there any standardized cost of production in connection with that product. We think the evidence is just to the contrary. That is a factual matter, however.

The Court: All right.

Mr. Alioto: We have already made our point, I

think, in connection with 36, page 25, the last paragraph of that instruction. In fact, the whole of that instruction implies that acting under an agency of the United States Government, it is impossible to violate the anti-trust laws.

The Court: Absolutely.

Mr. Alioto: Our view is, your Honor, for example, you will recall the testimony of Mr. Hill, which is uncontradicted in this record, that they had a discretion of fixing a price up to 50 cents. Your Honor will recall that.

Now, let us assume this happened: that they met with Mr. Bransome and they decided, "Look, we can fix a price up to 50 cents, but for our own purposes we will fix the price at 10 cents a pound"—to take an extreme example.

Even if they go out and pay 10 cents to the miners for Metals Reserve——

The Court: What was your evidence on that?

Mr. Alioto: Our evidence was there were two actual meetings.

The Court: Who testified to that?

Mr. Alioto: Burwell testified, and Mr. Bransome testified, and Mr. Kett testified to actual meetings with the competitors at which prices were discussed. Whether those resulted in agreement is a matter for the jury. But I am afraid if the jury hears this instruction and says, "Well, they agreed on prices they were going to charge for Metals Reserve," the jury can say that conduct is immunized because they are acting for the government.

The Court: There is a conflict in the testimony

as to who was present at the meeting and what took place.

Mr. Alioto: Yes, there is, if your Honor please. That is the point I am making.

The Court: You are objecting to the last part of 36?

Mr. Alioto: That is right.

Now, with respect to Instruction 37, we have a serious objection to this, if your Honor please. We do not believe the question is whether or not you can pick up a batch here or a batch there of vanadium oxide. We think the question is whether you can get a steady, dependable source of vanadium oxide upon which to mount a manufacturing operation. I will give an example of that. [2235]

There is some evidence in this case that the Blanding Mines was a supplier of Mr. Leir.

The Court: Not Blanding Mines. The testimony on Blanding Mines is pretty clear, the whole thing.

Mr. Alioto: I use that as an example in connection with 37, if your Honor please.

Then there is testimony that in January, 1942, the Blanding Mines stated on the advice or recommendation of their landlord, who was at that time negotiating with the Vanadium Corporation of America, they would not further supply Apex. Then they stopped supplying them. Later on, two years later, they made an offer to supply them with certain products.

The Court: Are you objecting to 37?

Mr. Alioto: Yes, if your Honor please. We think you ought to add the language, "some steady,

dependable source," instead of indicating perhaps flue dust on the high seas somewhere.

Mr. Neaher: May I note a correction in Instruction 38, page 26, in the fifth line there? The word "inter-action" should be "inaction." It was our mistake. It should have read "inaction,"—"Plaintiffs are not entitled to increase their damages through inaction," not "inter-action."

Mr. Alioto: Then with respect to Instruction 39, if your Honor please, the second paragraph of that Instruction 39, beginning: [2236]

"In this case plaintiff's claim for damages based upon the claim that they lost profits as a result of the alleged unlawful activities of the defendants"——

we also have the second claim that they paid more for goods actually purchased from them. That is perhaps the same thing.

Mr. Archer: I do not think that is in the complaint.

Mr. Alioto: I think if you take the last paragraph of the complaint it says something about the cost of their doing business having been increased. In any event, we are claiming something more than that.

~~The~~ Court: You object to 39?

Mr. Alioto: Unless we understand loss of profits includes such loss of profits as are incurred by reason of higher costs.

The Court: It would include any loss.

Mr. Alioto: We object to Instruction 40. We

think the Ninth Circuit is out of harmony with the Radovich decision in the Supreme Court.

The Court: They have lots of company.

Mr. Alioto: This public injury doctrine is an interesting doctrine. It comes out of the Tenth Circuit. Our Courts went for it hook, line and sinker, and the Supreme Court has decided otherwise. Our opinion is a combination to get plaintiff is, itself, a violation of the anti-trust laws, [2237] because that necessarily affects the price structure. This is like the Moore case, if your Honor please, which was not overruled.

I think the gentlemen on the other side will probably join with me in respect to Instruction 41, that while it is true the complaint alleges there was damage over the period July, 1938, to July 15, 1949, we think the jury cannot award damage except for the period beginning October 10, 1939.

Mr. Neaher: We do agree with that, your Honor.

Mr. Alioto: I thought you might add that after the second sentence.

Mr. Neaher: I have some suggested language:

"However, in determining the amount of damage, if you reach this point, you may not allow plaintiffs' recovery of damages for any losses which may have been sustained by them prior to October 10, 1939."

Is that all right?

Mr. Alioto: That is all right.

The Court: We will insert that.

Mr. Alioto: We, of course, object to Instruction 42 on the same ground, that even pursuing a gov-

ernmental agency, it is possible to use agency powers for the purpose of assisting a violation of the anti-trust laws, and I think I cited the distinguished decision in the Fifth Circuit to your Honor on that. [2238]

The Court: I do not think I can go along with you on that. The Canadian Government does it, regardless of what the influences were that induced it to do it. It is the act of the Canadian Government. I do not think we would have any jurisdiction in that matter whatever.

Mr. Alioto: With respect to Instruction No. 43, we think there are some cases holding that the Court ought not to instruct the jury that the damages will be trebled. Since, as a matter of law, the trebling is automatic upon the judgment, there might be a disposition of the jurors——

The Court: I hesitated to put that in, but it is a part of the Act itself.

Mr. Alioto: There are cases both ways, if your Honor please.

The Court: Do you want that left out?

Mr. Alioto: That would be our request, that the jury not be told that the damages ought to be trebled. But perhaps the defendants have another view of that.

Mr. Neaher: That was your instruction. You proposed it, didn't you?

Mr. Alioto: Yes, but in one of the recent motion picture cases it says the Court ought not to tell the jury that the damages ought to be trebled. However, there is a difference of view, and my view is

that if you tell the jury that, they will start fixing their award based upon that. [2239]

Mr. Neaher: I think we would agree to leave it out. Stop with "the previous instructions given you." Leave out the rest.

Mr. Archer: Is there anything else in Instruction 43 that adds anything?

Mr. Alioto: Yes. I think we can put a period after "you":

"* * *, then you may assess the damage in accordance with the previous instructions given you."

a period there; and the attorneys' fees and costs of suit are matters for the Court.

The Court: I suppose there is no objection to the next one.

Mr. Alioto: I have no objection to the reference to "tedious" in so far as my activities are concerned, but a distinguished play actor like Mr. Holland may take exception that any of his performance was tedious.

Mr. Holland: Where is it?

Mr. Alioto: We have one basic objection, if your Honor please, with respect to the whole matter of damages. I think the jury should be told implicitly under the Bigelow decision and the Flintkote decision that once they have determined that there was an injurious impact of a violation, if they find a violation on the part of the defendants, that thereafter there is no rule of certainty, or even reasonable [2240] certainty, with respect to fixing the measurement of damages, and the Court allows

very liberal inferences to be taken from relevant data. I say the language of the Bigelow decision should be given.

The Court: Wouldn't that somewhat invade the area of speculation?

Mr. Alioto: I would suggest this, if your Honor please; it has been done in other cases, and we have done it pretty usually in our proposed instructions: Just take that instruction from the Bigelow case and give it directly and verbatim. No one can object to the language of Justice Stone, who is a pretty good stylist, too, like Mr. Neaher.

The Court: Yes. But somebody has to start reversing the Supreme Court.

Mr. Alioto: These jurors have been sitting, if your Honor please, in other types of cases where the law requires a more stringent application of the rule of certainty on damages, and they may have in their minds, and I think they ought to be told, that that rule of common law certainly does not apply to the measurement of damages under the anti-trust laws once they have determined there has been an injurious impact.

The Court: My opinion is the rule is under the Clayton Act, which requires even stronger evidence than it would in the ordinary case. You are alleging a conspiracy, [2241] and that you were damaged because of the acts of conspirators. Now, that can't be just inferred. There must be some basic evidence. And that is why I could not follow your requested instruction on that point.

Is there anything else?

Mr. Alioto: Finally, if your Honor please, we would respectfully except to the failure of the Court to give those instructions proposed by the plaintiff on these various subject matters that I have mentioned.

The Court: I would note now on your requested instructions my ruling on them, and they will be filed. That is a part of the record.

Mr. Alioto: In other words, the record will show our proposed instructions were rejected, modified, or given. And we would except to the failure to give those instructions which the Court marks are not given.

The Court: I will note an exception on each one of them.

Mr. Alioto: Thank you very much.

Mr. Holland: We have no exceptions, your Honor. We just have one question.

I know that Mr. Alioto's address is going to be interesting, and I want to listen to it with enjoyment and not interrupt it. I assume it is understood by everybody that they can't go into the period prior to July 1, 1938, in the [2242] argument.

Mr. Alioto: There is reason to believe that that is understood. It has been made very evident in this case. Actually, there are still a few references in that regard which I noted last night—discussions in 1945 about the MacQuigg Report. But since the report itself is not in evidence there is no point in mentioning it.

Mr. Holland: You are not going to waive it around.

The Court: How much time do you want in your argument? It is 10:30.

Mr. Alioto: Your Honor, earlier we talked about a couple of hours covering it. I think that general estimate is still correct, but I would like to feel that I am not going to be chopped off on the nose. I think you will find that two hours is a fairly good estimate, without actually holding us down.

The Court: The Court will not be unreasonable on that.

Mr. Holland: I think the Court wanted to know how long you will take on your opening.

Mr. Alioto: I would figure the opening will take approximately three-quarters of an hour total time.

The Court: Then you will have time this forenoon to make your opening?

Mr. Alioto: I think so. I think we should start [2243] now.

Mr. Holland: Do you think, in view of the fact that there are two defendants to argue, and then a rebuttal argument on behalf of the plaintiff, that maybe we ought to take a little less time than two hours for lunch?

Mr. Alioto: I have no objection.

Mr. Holland: Whatever the Court wants.

The Court: How is that?

Mr. Holland: I just wondered if we might take an hour, or an hour and a half, for lunch, instead of two hours, which would not require the jury to be kept here as late as five o'clock to hear the arguments. Whatever the Court wants.

The Court: I have been requested by one of the

judges to have lunch with him, and I do not know how good a lunch he will have. But we can do this: There is no reason to hurry this matter. I doubt if you can finish the argument.

Mr. Holland: I think we can, and I think the argument ought to be finished up so your Honor can instruct tomorrow. I think it would be very unfortunate, for example, if Mr. Alioto's rebuttal were left until tomorrow.

The Court: I have no objection to extending beyond four o'clock if necessary in order to finish your argument.

Mr. Holland: I believe I will be very short.

The Court: If we can finish the argument today, [2244] it would be satisfactory to have the instructions in the morning.

(Whereupon the Court, counsel for the respective parties and the court reporter entered the courtroom and the following proceedings were had within the presence and hearing of the jury:) [2245]

* * * * *

Instructions of the Court

The Court: Members of the jury, you have heard the evidence in this case and the argument of counsel, and it now becomes the duty of the Court to instruct you as to the law of the case. The jury is the sole and exclusive judge of the facts, but the Court is the judge of the law and it is your duty to accept the law as given you by the Court.

The plaintiffs in this action are Continental Ore

Company, a partnership composed of Henry J. Leir, Ernad D. Leir and Lina Schloss, and said parties as individuals and as partners. This partnership is a successor in interest to the Continental Ore Corporation which was incorporated under the laws of the State of New York on June 16, 1939. On May 5, 1942, these parties formed a partnership doing business as Continental Ore Company.

The defendants in this action are Union Carbide and Carbon Corporation, sometimes referred to as Union Carbide, a New York corporation. This corporation directly controls and operates the following subsidiary corporations which have certain specified functions and duties. They are called units of Union Carbide and Carbon Corporation.

United States Vanadium Corporation, sometimes referred to as U.S.V., is a New York corporation and is the unit of Union Carbide which acquires and produces vanadium-bearing ore and vanadium oxide. [2459]

Electro Metallurgical Company, sometimes referred to as Electromet, is a unit of Union Carbide in the alloys and metal division. From June 16, 1939, to February 23, 1949, Electromet was engaged in the production of ferro-vanadium and vanadium oxide, among other activities.

Electro Metallurgical Sales Corporation, sometimes referred to as Electromet Sales, is also a corporation in the alloy and metals group of Union Carbide. In March, 1949, it was merged into Union Carbide.

Electro Metallurgical Company of Canada, Limited, is a Canadian corporation.

Also named as a defendant is Vanadium Corporation of America, sometimes referred to as V.C.A., which is not owned by Union Carbide or a subsidiary or affiliate of it. It is a Delaware corporation with its principal place of business in New York City.

It is admitted, however, that no service was had upon Electro Metallurgical Company, Electro Metallurgical Sales Corporation and Electro Metallurgical Company of Canada, and that the only defendants served, and therefore involved in this case, are Union Carbide and Carbon Corporation, its subsidiary, United States Vanadium Corporation, and Vanadium Corporation of America.

This action is brought under the Sherman and Clayton Acts. The plaintiffs bring this case on the specific [2460] enactment of Congress known as Section 4 of the Clayton Act, which provides as follows:

“Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any District Court of the United States in the District in which the defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee.”

It is alleged by plaintiffs that the defendants

have violated Sections 1 and 2 of the Sherman Act. Section 1 states in part as follows:

"Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

Section 2:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be [2461] punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

This action was brought to recover damages claimed to have been suffered by the plaintiffs by reason of alleged violation of the anti-trust laws of the United States. That is to say, plaintiffs contend that the defendants have violated the anti-trust laws and that plaintiffs were virtually eliminated from the vanadium industry by this alleged violation of law.

The gist of plaintiffs' complaint is that the part of their business concerned with vanadium products which they began in July, 1938, was damaged and finally virtually eliminated after 1944 as the alleged result of an alleged unlawful combination and con-

spiracy among defendants to control the vanadium industry. *N.J. 4*

⁴Plaintiffs specify that the alleged acts and practices of the defendants which directly and proximately affected them were:

First, Apex Smelting Company of Chicago, Illinois, with which plaintiffs had an exclusive brokerage contract to sell its ferro-vanadium production, and under which operations commenced in the Spring of 1940, was compelled *the* cease the manufacture of ferro-vanadium in the Spring of 1942 because it was unable to operate profitably for the reason that it was [2462] unable to obtain vanadium oxide.

Two, the failure of plaintiffs' own operation on Long Island, New York, begun in August, 1942, because of the difficulty of securing raw materials which made it commercially impossible to operate profitably.

Third, Imperial Paper and Color Corporation of Glen Falls, New York, was forced to abandon in 1944 a contract made in that year with plaintiffs, under which plaintiffs were to act as sales agent for Imperial's entire output of ferro-vanadium and vanadium oxide. This is alleged to have been due to Imperial's and plaintiffs' inability to secure vanadium oxide or vanadium-bearing ores.

Fourth, the loss in 1943 of a Canadian customer, Atlas Steels, Limited, and plaintiffs' elimination from the Canadian market as a result of activities of Electro Metallurgical Company of Canada, then the agent of the Canadian Government in the war-

time allocation of ferro-vanadium to Canadian steel firms. Plaintiffs further allege that these activities embraced an agreement by defendants to divide the Canadian market among themselves and exclude plaintiffs.

Fifth, either plaintiffs, Climax Molybdenum Corporation, or both, were deterred in June, 1943, from concluding negotiations for Climax to manufacture ferro-vanadium for plaintiffs' account by threats of reprisal by an alleged official of defendant Union Carbide. [2463]

In their answers all of the defendants and each of them specifically denies the material allegations of plaintiffs' complaint which the Court has just summarized for you and each and every one of the claims made by the plaintiffs in their complaint.

For reasons deemed sufficient by the Court certain issues have been withdrawn from this case. You are instructed that in your deliberations you are to disregard any issues which have been withdrawn from your consideration and any comments of counsel about such issues.

Counsel, in arguing this case to you, have commented upon and argued upon the facts, as is their privilege and their duty. If you find any variance between the facts testified to by the witness or as shown by the documentary evidence, and what has been stated to you by counsel to be the facts, to the extent of such variance you must consider only the facts testified to by the witnesses or as shown by the documentary evidence.

At times throughout the trial the Court has been

called upon to pass on the question whether or not certain offered evidence might properly be admitted. With such rulings and the reasons for them you are not concerned. Whether offered evidence is admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference as to what weight should be given the evidence or as [2464] to the credibility of a witness. In admitting evidence to which an objection is made the Court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the Court you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

When the Court has struck out evidence previously admitted, you are instructed that you are not to consider such evidence on any matter or for any purpose. When the Court has advised you that certain evidence is to be considered with relation to a particular defendant, you may not, of course, consider such evidence in relation to any other defendant.

You may not presume that the defendants, or any of them, are liable to plaintiffs simply because plaintiffs have sued them and filed a complaint alleging a conspiracy and the resulting damages. Neither may you presume that the defendants are not liable simply because they have in their answers denied the allegations made in plaintiffs' complaint.

The mere fact that plaintiffs have seen fit to join

a number of parties as defendants does not mean that all or any of them are liable. Plaintiffs' claim must be judged separately as to each defendant, and the position of each defendant should be judged on its own merits. This is especially true wherever the facts, circumstances or nature of the charges made or [2465] defenses asserted differ with regard to one defendant from those regarding all or some of the remaining defendants.

Each defendant is entitled to individual consideration of the evidence as applied to it to determine whether that particular defendant participated in any combination or conspiracy. No defendant should be prejudiced in the minds of the jurors merely because it has been named by the plaintiffs with others as a defendant in this case.

All of the parties defendant are corporations. In that connection the Court instructs you that a corporation is held to the same measure of liability as an individual. A corporation acts through its officers, directors and agents and may through one or more of them conspire with another corporation or with other individuals. Any act of an officer, director or agent of a corporation which is done within the scope of his duties or authority you may consider to be an act of the corporation itself. The parent corporation named as a defendant in the parent case is not chargeable with the acts of its subsidiary corporations solely because it is the parent corporation, but if you should find that the parent corporation used its ownership of the subsidiaries to cause such subsidiaries to act in its behalf,

then such parent corporation is liable for the resulting acts of its subsidiaries.

The Court now instructs you as to how you shall evaluate the testimony and the exhibits which have been [2466] tendered to you. It is basic to your consideration of the evidence that you bear firmly in mind that the plaintiffs have the burden of proof regarding all the issues which the Court has just outlined to you.

This means that on each of these issues plaintiffs must prove their contentions by what is called a preponderance of the evidence. The fair preponderance of the evidence does not necessarily mean the greater number of witnesses, but it means the greater weight of the evidence taken altogether.

It is said by the courts that the preponderance of the evidence means the evidence of greater convincing force. It means evidence which satisfies the conscience and brings conviction to an intelligent mind.

You must weigh the evidence as though it were placed on a scale. If the scale is weighted in favor of the plaintiffs, that is to say, if they have produced evidence of the greater convincing force, they have sustained their burden of proof. If it is weighted in favor of the defendants, or if it is evenly balanced, the plaintiffs have failed to sustain their burden. Unless you are satisfied that plaintiffs have met their burden of proof, you must return a verdict for the defendants.

You will in no event make any finding in this case which is based on speculation and conjecture

rather than competent evidence and the inferences reasonably to be drawn [2467] therefrom. It is not enough that there has been created in your minds some doubt or suspicion as to the conduct of the defendants. The plaintiffs must produce proof of such a nature as carries a conviction to your minds such as would influence you in the conduct of your own business or daily affairs. The character of the proof must be such as you would be willing to act upon and base a judgment upon in the disposal of important matters.

There are two kinds of evidence, direct and circumstantial. Direct evidence is that kind of evidence by which a fact is proved directly and without inference from other facts. Circumstantial evidence is that kind of evidence by which an inference of an unknown fact is drawn from the existence of known facts. In arriving at such verdict you are to consider all of the evidence, both direct and circumstantial.

Before a fact can be said to have been proved by circumstantial evidence alone it is necessary not only that the circumstances proved by the evidence shall reasonably give rise to an inference of such fact but also that no other equally reasonable inference may be drawn from the same circumstances. If two equally reasonable inferences can be drawn from circumstances proved by the evidence, one consistent with the fact sought to be proved and the other inconsistent therewith, you should not infer the fact sought to be proved from such circumstances alone. [2468]

In evaluating the testimony to decide whether the plaintiffs have sustained their burden of proof you will have to decide what credibility is to be attached to the testimony of the various witnesses. Whether you believe or do not believe the witnesses, and the weight to be attached to their testimony, is a matter for your sole and exclusive judgment.

In passing upon the credibility of the various witnesses it is your right to accept the whole or any part of their testimony or to discard or reject the whole or any part.

It is your over-all duty to scrutinize carefully the testimony given and in so doing you are to consider the following:

The circumstances under which the witness testified, his demeanor and manner on the witness stand; his intelligence; the extent to which his testimony is contradicted or corroborated by other evidence, if at all; the reasonableness or unreasonableness of his story; his apparent candor and fairness or the lack thereof; his interest or lack of interest, if any, in the result of the case, and in any other matter which reasonably sheds light upon his reliability as a witness.

There are several modes of impeaching or discrediting a witness. He may be impeached by evidence that he has made at other times statements inconsistent with his present testimony, by contradictory evidence, or by evidence that he is biased against or hostile toward the party against [2469] whom he testifies.

If it is shown that a witness has testified falsely

at one part of his testimony, you are at liberty to disregard the testimony of that witness entirely or in part.

The purpose of the anti-trust laws is to prevent and declare unlawful contracts, combinations and conspiracies designed to unduly restrain competition, or to monopolize or to unduly obstruct the free course of trade among the different States and with foreign countries. The restrictions imposed by this law were intended to frustrate unreasonable restraints, but not to prevent the use of reasonable means to protect interstate commerce from injurious or destructive practices or the promotion of competition upon a sound basis.

The plaintiffs' complaint is brought under the anti-trust laws. Insofar as this action is concerned, unless there has been agreement, combination or conspiracy among two or more persons, the anti-trust laws are not applicable. While the agreement, combination or conspiracy can be established by circumstantial evidence without direct proof, still when all is said and done, it is the true and ultimate fact which must prevail. Either there is some agreement, combination or conspiracy or there is not. Unless you find by a preponderance of the evidence that two or more defendants joined together in an agreement, combination or conspiracy by reason of which plaintiffs were injured, you must find for the defendants. [2470] Moreover, you cannot find against any defendant who was not a party to an agreement, combination or conspiracy by reason of which plaintiff were injured.

In this type of action the burden is upon the plaintiffs to prove the four basic elements of their claim:

First, they must prove that the defendants did in fact engage in an unlawful agreement or conspiracy.

Second, they must prove that overt acts were committed or performed by defendants pursuant to the unlawful agreement or conspiracy.

Third, they must prove that these acts injured them and were the direct, immediate and proximate cause of such injury.

Fourth, they must prove their damages.

An unlawful conspiracy is an agreement or understanding, express or implied, between two or more persons, to do an illegal act, or to do a legal act in an illegal manner. The essence of the conspiracy is the unlawful agreement or combination. A conspiracy is sometimes defined by the courts as a partnership in an illegal enterprise.

The term "monopolize" as used in Section 2 of the Sherman Act means the joint acquisition or maintenance by the members of the conspiracy formed for that purpose, or the power to control and dominate interstate trade and commerce in a commodity to such an extent that they are able, as a group, [2471] to exclude actual or potential competitors from the field, accompanied with the intention and purpose to exercise such power.

The phrase "attempt to monopolize" means the employment of methods, means and practices which would, if successful, accomplish monopolization, and

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which, though falling short, nevertheless approach so close as to create a dangerous probability of it, which methods, means and practices are so employed by the members of and pursuant to a combination or conspiracy formed for the purpose of such accomplishment.

It is in no respect a violation of the law that a number of individuals or corporations, each acting for himself or itself, may own or control a large part, or even all, of their particular commodity, or all the business in a particular commodity.

An essential element of the illegal monopoly or monopolization is the existence of a combination or conspiracy to acquire and maintain the power to exclude competitors to a substantial extent.

In this case the claim is that the defendants entered into an agreement or combination to restrain and monopolize interstate and foreign trade in vanadium products. The burden is on the plaintiffs to establish the existence of such a conspiracy during the time plaintiffs were in business. If you find that the plaintiffs have not proved that there was [2472] such a conspiracy between the defendants, you should not consider any other issues in the case and you must return a verdict for the defendants.

The Continental Ore Company, in order to prove the existence of a conspiracy, need not show you an express or formal agreement to do so. You are allowed to infer the existence of a conspiracy from a course of dealings or through an exchange of words and from acts done. An unlawful conspir-

acy is often formed without simultaneous action or agreement on the part of the conspirators. Plaintiffs are seldom capable by direct testimony or evidence to prove a conspiracy. Therefore the law allows you as members of the jury to infer the existence of a conspiracy from things actually done, taking into consideration all of the facts and circumstances surrounding the conduct of the parties who are charged with the conspiracy. Proof of conspiracy, however, requires more than mere suspicion or conjecture, and there must be either direct proof of conspiracy or circumstantial evidence sufficiently strong to give rise to an inference of a conspiracy. It is sufficient, however, if the plaintiffs establish by a preponderance of the evidence or the greater weight of the evidence that two or more parties in any manner came to a mutual understanding to establish a common or unlawful design.

The law recognizes the right of any trader or manufacturer engaged in a private business freely to exercise [2473] his own judgment, his own independent discretion as to the parties with whom he will deal or refuse to deal.

If a prospective buyer indicates to a seller in advance that he would not buy at the seller's current price for similar sales, the seller's failure to offer goods at that price does not evidence a refusal to deal.

The Court instructs you that if any defendant acted on the basis of its own business judgment, no inference of conspiracy can be drawn against that

defendant, even though after weighing all of the circumstances your own personal opinion might be that the defendant's judgment was incorrect. You cannot find that the defendants entered into an unlawful agreement or conspiracy because you disagree with their business judgment.

It is unlawful per se for two or more competitors by agreement to fix prices, and any scheme or plan which fixes prices is unlawful under the anti-trust laws.

The existence of uniformity of prices between two or more competitors is a circumstance which the jury may consider in determining whether or not a conspiracy to fix prices existed.

You are instructed, however, that mere uniformity of price in the sale of commodities such as vanadium products are not in themselves sufficient evidence of an unlawful agreement or conspiracy, since uniformity in price may result [2474] solely from economic forces.

You may consider diversity of business practices among defendants as tending to show the absence of any unlawful agreement or conspiracy among them.

In reaching a conclusion as to the existence of the conspiracy as charged, and whether such defendant was a member, you must do so without regard to, and independent of, the acts and declarations and statements of the others.

The existence of the conspiracy cannot be established against any co-defendant by the acts or declarations of his alleged co-conspirators done or made


in his absence. The existence of the conspiracy and each defendant's connection with it must be established by independent proof based upon the reasonable inferences to be drawn from such defendant's own acts, his own declarations and his conduct.

The acts or statements of employees, agents or officers of a corporation can only be considered as acts or statements of that corporation if the evidence shows that the corporation through its shareholders, board of directors or authorized management officers vouched for part or all of an employee's, agent's or officer's statement.

It is not necessary to show that the statement was expressly vouched for. If authorized management officers direct that business be conducted and relies upon a particular intramural statement or report, and it is so conducted without [2475] reservation, the corporation has, by implication, adopted the statement or report, and is chargeable with it as an admission.

Evidence of acts and declaration of agents or employees of each of the defendants are not to be considered as evidence against other alleged members unless you find from circumstantial evidence, independent of such acts or declarations, that there was a conspiracy between the defendants.

If you find that any defendant adopted a business practice similar to that of another defendant, this is circumstantial evidence from which various inferences may be drawn. It is plaintiffs' contention that such similar business practice, if any you find,



is reasonably consistent only with unlawful agreement or conspiracy among defendants. It is defendants' contention that such similar business practices as you may find are either the result of the standardized nature of their products or of other economic factors confronting all defendants alike, or the result of the necessity upon each defendant to meet its competition, or the result of a belief independently arrived at by each defendant that such business practice was least expensive, most efficient or otherwise the best course for it to follow.

Plaintiffs have the burden of proof on this issue. You must find for the defendants unless you find that the inference suggested by plaintiffs is the only conclusion that can fairly and reasonably be drawn from the similarity of [2476] business practices of any of the defendants.

Not only must the plaintiffs prove a conspiracy in violation of the anti-trust laws, they must, in addition, show that the defendants committed or performed overt acts in furtherance of that unlawful conspiracy. Plaintiffs are private parties suing for damages. This is not a governmental suit. Private parties, unlike the Government, must prove more than a public wrong; they must prove that the public wrong is a private wrong to them. Private civil anti-trust actions are founded not upon the mere existence of a conspiracy, but upon injuries which result from the commission of forbidden overt acts by the conspirators. Therefore, no private action accrues from the mere agreement or conspiracy itself, because standing alone a conspir-

acy does not invade any private right. The plaintiffs must accordingly prove that in carrying out the conspiracy which they claimed existed, the defendants performed overt acts which have had a direct detrimental impact upon their business. The burden is on the plaintiffs to establish such overt acts.

In determining whether or not the plaintiffs have been injured and damaged by reason of the defendants' alleged unlawful conspiracy, you must determine whether or not plaintiffs have established with reasonable certainty that but for the conspiracy they would have had vanadium products to sell and would have sold them at a profit. [2477]

The damages which you may properly award to plaintiffs, if you find that plaintiffs have any right to recover damages, are limited to those actual damages which can be determined from the evidence, and do not include claimed damages which are merely speculative, remote or uncertain. Actual damages must be proved by facts from which their existence is logically inferable and cannot be supplied by conjecture.

In determining whether plaintiffs were injured or damaged as a result of the alleged unlawful activities of the defendants, you may consider the conditions of business prevailing at the time, including abnormal shortages in vanadium products caused by war, the effect of Government controls upon the maximum sale prices of vanadium products, Government purchasing policies for both vanadium ore and finished products, export embargoes,

and Government priority and allocation regulations upon domestic distribution.

The evidence discloses that immediately after the Pearl Harbor disaster in December, 1941, and the subsequent declaration of war by the United States against Japan and Germany, the United States Government, through its various agencies, ordered controls of all materials, including ores and metals which might be used in national defense. These orders gave the United States Government the power to control the production, sale and allocation of all such war materials and [2478] under such orders, priorities were instituted which were in effect from January, 1942, through February 29, 1944.

The Court instructs you that to the extent that any defendant acted on behalf of the Government of the United States or on behalf of one of its agencies or services, and in the scope of its duties in that regard, any such actions cannot be violations of the anti-trust laws. No such actions may form any proper part of plaintiffs' proof of conspiracy to monopolize or to restrain trade in the present case, nor may plaintiffs recover any damages which may have resulted from such actions. # 57

If you find that plaintiffs stopped such business as they may have in ferro-vanadium or vanadium oxide at a time when they were able to buy vanadium oxide from any supplier, whether that supplier might have been either of the defendants or any other person or Government agency, at prices which would have enabled the plaintiffs to make a

profit, then you cannot find that plaintiffs lacked supplies of vanadium products to sell as a result of the activities of the defendants or any of them.

38 You are instructed that plaintiffs are not entitled to recover an element of damages which could have been avoided through the exercise of reasonable efforts on their part. Plaintiffs are not entitled to increase their damages through inaction, but must take all reasonable steps to mitigate their [2479] damage and reduce their loss. In determining whether plaintiffs have discharged their duty to mitigate damages, you may consider whether reasonable men in plaintiffs' position would have accepted offers made to them either before or after they ceased their vanadium business to supply them with vanadium oxide at prices which would have permitted them to operate at a profit. You may consider whether reasonable men in plaintiffs' position could have made arrangements to process ferro-vanadium, and whether reasonable men in their position would have made additional efforts to find other suppliers of vanadium oxide or processors of ferro-vanadium.

If you find that by any of these means plaintiffs could reasonably have avoided the cessation of their Canadian business or could have recommended it at any later time, you must limit plaintiffs' damages to those losses which they would have suffered had they taken such advice.

If you find that plaintiffs suffered damage by reason of the alleged unlawful activities of the de-

fendants, you are to proceed to determine the amount of damages so caused to plaintiffs.

In this case plaintiffs' claim for damages is based upon the claim that they lost profits as a result of the alleged unlawful activities of the defendants. Plaintiffs must prove the amount of such lost profits, if any, only by evidence from which a just and reasonable inference can be [2480] drawn. You may not speculate as to the amount. Your determination must be based on evidence as to the persons from or through whom plaintiffs would probably have been able to obtain vanadium products, persons to whom plaintiffs would probably have been able to sell the vanadium products they so obtained, and the net profit which plaintiffs would probably have obtained on any such transactions.

Plaintiffs must satisfy you by a preponderance of the evidence that they would in fact have made net profits in addition to any net profits they actually made and they must furnish you with a fair and reasonably accurate standard for measuring just what that additional net profit would have been. If they have not furnished you with such a standard and if you have no means of ascertaining what their damages may be other than by speculation and guesswork, in such event you must return a verdict for the defendants.

In the event you find by a preponderance of the evidence that plaintiffs were injured by the acts of the defendants, you are instructed that this alone is not sufficient to permit you to award damages to the plaintiffs. Injury to the plaintiffs individu-

ally is not sufficient to warrant recovery by plaintiffs in a civil action under the anti-trust laws. Plaintiffs, in addition, must establish by a preponderance of the evidence that the acts which caused them injury were part of an illegal agreement or conspiracy which was reasonably [2481] calculated to prejudice the public interest by unduly restricting the free flow of interstate commerce. In other words, even if you should find that there were acts of the defendants directed at plaintiff alone, this is not sufficient. You must find that defendants were engaged in a conspiracy to injure the general public by restraining the free flow of interstate commerce, and that it was by reason of this general conspiracy that plaintiffs' business was destroyed.

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41 Under plaintiffs' complaint it is alleged that the defendants' acts were in violation of the anti-trust laws and resulted in damage to the plaintiffs from July, 1938, to July 15, 1949.

You are instructed, however, that in determining the amount of damage, if you reach this point, you may not allow plaintiffs recovery of damages for any losses which may have been sustained by them prior to October 10, 1939.

42 Electro Metallurgical Company of Canada, Limited, a Canadian corporation, whose stock is owned by Union Carbide, is a corporation operating in Canada and during the period in controversy was designated by the Government of Canada as its purchasing and sales agent of war materials. You are instructed that any act of said corporation, per-

formed as an agent of the Canadian Government even though it resulted in injury to the plaintiffs, would not be a basis for liability on the part of Union Carbide, as said acts would be wholly [2482] within the jurisdiction of the Canadian Government.

If from a preponderance of the evidence you are satisfied that the defendants did enter into an unlawful conspiracy to restrain trade and as a direct and proximate result of said acts of the defendants, that plaintiffs have suffered damage, then you may assess the damage in accordance with the provisions of the instructions given you.

You have heard during the course of this trial references to a Government case against the defendants in Denver, Colorado. The Court instructs you that in your deliberations about this case you are to decide this case on its own merits without regard to the Denver case.

The Court realizes that this has been a long and somewhat tedious case so far as the jury is concerned, but in the foregoing instructions the Court has limited the instructions to questions of law, and it is not its purpose or intention to comment in any manner upon the evidence. You have heard the evidence and you are the sole judges of the evidence and the Court is content to leave that matter for your consideration.

The Court apologizes for the length of these instructions, but as you may observe, they are intended to state definite propositions of law. Both plaintiffs and the defendants have submitted re-

requested instructions, and while many of them may appear repetitious, yet in the Court's [2483] judgment they are not conflicting and the foregoing instructions have been given to you in order that the theories of the law of both plaintiffs and defendants may be presented to the jury.

The instructions of the Court constitute the law of this case which are to govern your deliberations. You must be governed by them as a whole and are not to single out one instruction to the exclusion of all the others.

When you retire you will select one of your number as foreman, who will preside over your deliberations and sign the verdict when you have arrived at a verdict. It is necessary for you all to agree as there are no majority verdicts in this court.

Forms of verdict will be submitted.

Now, in this case it was anticipated that it would take some time to try it, and frequently during trials some member of the jury may be incapacitated and have to be excused, but in order that we may have a full jury of twelve we have selected an additional juror to sit during the trial of this case, so that that juror may take the place of anyone who might be disqualified to act. At this time the last juror selected may be excused. The jury may retire to deliberate on your verdict.

(Thereupon at 2:57 P.M. the jury retired from the courtroom, and in their absence the following occurred:) [2484]

Mr. Alioto: Before the Court leaves I wonder if I can take up one matter with the Court. In

going over the instructions I thought there were others that were excepted to that do not appear on the list as instructions to which we took exception, and I think the reason for it is that in making my objections I made them in connection with certain propositions of law, and those propositions of law may have appeared in one, two or three instructions and I may have mentioned them in only one. But in addition to the objections to the instructions noted on the copy which I have received, I wish to note an exception to Instruction No. 8 insofar as it does not incorporate in its last paragraph the rule with respect to declarations of co-conspirators.

I also wish to note an exception to No. 10 for the same reason.

I also wish to note an exception to Instruction No. 19 as well as an exception to No. 20. These cover the general propositions of law that were mentioned in chambers the other day to the effect that it is our belief that the Union Carbide defendants, or that the Union Carbide alone, or that U.S.V. alone can be found to have violated Section 2 of the anti-trust laws, and that the Vanadium Corporation of America alone can be found to have violated Section 2 of the anti-trust laws with respect to ferro-vanadium.

The same thing would apply to the second to the [2485] last paragraph of Instruction No. 22. I take it where the Court has noted an exception allowed plaintiffs, it covers the entire instruction and not just the paragraph at which the "exception" appears?

The Court: Do you reserve an exception to Instruction 22?

Mr. Alioto: Yes. The "exception" is up at the top. That covers all the paragraphs, I take it. Thank you.

The Court: About these others——

Mr. Alioto: There are a few others and I will be finished in just a moment, if your Honor please. We would also respectfully except to the giving of Instruction No. 30 as being too extreme in connection with the adoption by the corporation.

We respectfully except to the giving of Instruction No. 33.

We except to Instruction No. 34, Instruction No. 35, we have already objected to Instruction No. 36, we would except to Instruction No. 38, Instruction 39—that already appears on 39—we except to Instruction No. 38 and we respectfully except to Instruction No. 42.

We would respectfully except to the instruction in which the Court tells the jury that in its view there was no conflict between the instructions of the plaintiff, the proposed instructions of the plaintiff and the defendants. We [2486] believe on some issues that there was rather extreme conflict.

The Court: No, I didn't mean that. I meant the ones that I have given.

Mr. Alioto: I thought it may carry the implication that in those proposals there was no conflict. Now, I take it it will be deemed, gentlemen, that the exceptions to the instructions again were taken

before the jury was sent to its room for deliberations?

Mr. Neaher: That is agreeable.

Mr. Archer: That is agreeable.

The Court: Is there any objection on the part of the plaintiff's attorney to allow an exception to these instructions as suggested?

Mr. Archer: No, your Honor.

Mr. Neaher: No, your Honor.

The Court: They will be noted.

Mr. Alioto: One final matter, if your Honor please. I take it before the exhibits are sent in to the jury room there will be a stipulation of counsel that the exhibits are in such form that there is no objection to their being sent in?

The Court: If they call for them.

Mr. Alioto: Yes. But I have in mind there are a few exhibits, if your Honor please, which were admitted that contain statistical data, for example for the years 1933 to [2487] 1945, and the Court said, "We will admit that only insofar as it pertains to the years 1938 to 1945." I think if those exhibits are called they can be physically covered.

The Court: If they are called for. It isn't my custom to send the exhibits to the jury room unless the jury calls for some specific exhibit. What is your practice here?

Mr. Archer: That is satisfactory, your Honor.

Mr. Neaher: That is satisfactory.

Mr. Alioto: We think the practice is probably to the contrary.

Mr. Archer: If you want to get these exhibits

fixed up—the exhibits are not in shape to go to the jury right now.

Mr. Alioto: There are just a few. They can be covered in a minute or so. That is no insurmountable problem.

The Court: If they call for them we can take it up.

Mr. Archer: With the Court's permission, I will erase Mr. Alioto's argument from the blackboard with the idea the jury may be back here on some question. Is that satisfactory?

The Court: What is that?

Mr. Archer: I think I ought to erase the blackboard.

Mr. Alioto: I do not know why that should be [2488] done, if your Honor please.

Mr. Archer: It is not evidence in the case. They may be back on some other question.

Mr. Alioto: That would involve a trespass upon private property.

The Court: What is your custom about holding the jury later than four o'clock?

The Clerk: They hold them and send them out to dinner, and some of the judges let them deliberate until a reasonable hour. Some of the judges will send them home in a civil matter.

The Court: What is your attitude on that? I have a good deal of sympathy for a jury, and I think this jury has endured quite a little punishment here. Is there any reason that they could not be excused at the usual time to return tomorrow morning and resume their deliberations?

Mr. Holland: No, I think they would like to get a dinner out of it, don't they?

Mr. Neaher: They may also prefer to work on rather than to come back tomorrow.

Mr. Archer: Whatever their desire would be would be satisfactory to us, or the Court's desire would be satisfactory to us.

Mr. Holland: After a certain time would your Honor have them return a sealed verdict, go home and come back [2489] the next day?

Mr. Alioto: Return a sealed verdict?

Mr. Archer: I think Mr. Holland was thinking that if we kept them late, that they could return a sealed verdict so we don't have to get everybody out here.

Mr. Alioto: I think our practice here, and there is much to commend it, is to be here at the time the jury returns its verdict.

The Court: Suppose we do this. I can remain in my chambers until five o'clock, and if they have not arrived at a verdict then, they may be excused until tomorrow morning.

Mr. Archer: That is satisfactory.

Mr. Alioto: That is satisfactory.

Mr. Neaher: That is satisfactory.

(At 3:35 p.m. approximately counsel for the respective parties were called into the Court's chambers and the following occurred:)

Mr. Alioto: If your Honor please, your Honor has been good enough to hear us in chambers in connection with the request made by the plaintiff. It has come to our attention the jury has sent out a

request for some of the exhibits, the request being, as we understand it, the requirements contract tendered to the plaintiff by the defendant Union Carbide. I do not know what your Honor's practice is with respect to this matter, but I would respectfully request, first of all, that [2490] the request from the jury be read into the record, and therefore I would respectfully move the Court that all of the evidence which has been, all the documentary evidence which has been admitted in this case be sent in to the jury so that they would have all of that evidence before them rather than just one isolated piece of evidence that went in. We think it prejudicial that the jury not have before it all the documentary evidence that has been admitted.

The Court: It is the ruling of the Court that the jury is entitled to any portion of the exhibits that they request. This is a specific request and it has been complied with. The objection will be overruled.

Mr. Archer: I would like to point out for the record, too, that there are a great many of those statistical exhibits which were going to be corrected or have part of them eliminated, and on some of those I know that has not been done as yet, so we couldn't send them in right now.

Mr. Alioto: Is that the specific basis on which the objection is being ruled upon? I do not want anything collateral that we can fix up in five minutes given as the reason for not sending in the exhibits.

The Court: The Court will not send in any exhibits except those asked for by the jury.

Mr. Alioto: And not because of any reasons suggested by Mr. Archer which can be remedied in five minutes, [2491] is that correct?

Mr. Archer: I do not think it can be remedied in five minutes. There were some of those accounting exhibits that had to have things written on them. It has not been done yet.

The Court: I think it would simply add confusion to confusion to send all the exhibits in there.

Mr. Alioto: Yes, but we have a confused record at the moment now because Mr. Archer has introduced a ground of objection and I do not feel I can leave it on that ground.

Mr. Holland: I think the Court ruled before Mr. Archer said anything.

Mr. Alioto: Yes, but now we have a confused record. It is not clear, in my view. I suggest we send in the exhibits now and I will physically——

The Court: Which exhibits?

Mr. Alioto: All of the exhibits, and I will physically take off those portions of the statistical exhibits before 1938.

The Court: The Court is not going to do that.

Mr. Alioto: And not for the reason that the exhibits are not in shape to go in?

The Court: No. I am just stating that any exhibit the jury requests will be supplied and they will not be sent any exhibits that they have not requested them. [2492]

Mr. Neaher: I think I would like to point out during the course of this trial practically every exhibit in evidence was read to the jury.

The Court: Not once but many times.

Mr. Alioto: We have one further request, if your Honor please, and that is that any message from the jury be physically incorporated into the record here so we know exactly what it is the jury requested.

Mr. Neaher: We have no objection to that.

The Court: I see no objection to that.

Mr. Alioto: Who has the slip of paper?

Mr. Holland: The Clerk.

The Court: Do you have that request?

The Secretary to the Court: This is another one. The request I sent back in.

The Court: "May we see the USV contracts Mr. Archer referred to yesterday afternoon." What contracts were those, the USV contracts?

Mr. Archer: Oh, I think they are contracts to produce uranium and vanadium for the United States Government.

Mr. Alioto: You see, that is the problem here and I think this demonstrates it. I think they have reference to this alleged contract to supply in 1939, which are contracts running to a man named Poliakoff.

The Court: "May we see the USV contracts Mr. [2493] Archer referred to yesterday afternoon." Now, which contracts did you refer to?

Mr. Archer: U.S.V. has no contracts with Poliakoff. The only U.S.V. contracts referred to that I can think of are the contracts we had with Uravan in Grand Junction and Durango for the production of vanadium oxide.

Mr. Holland: Why don't we ask the jury as to that?

Mr. Alioto: I think in view of this request all the exhibits should be sent in.

The Court: I am not going to do that at all. I wouldn't think of it.

Mr. Holland: Perhaps the jury could be asked to specify a little more clearly with reference to subject matter so they could be identified.

The Court: Ask the foreman of the jury if he can be a little more specific in stating just what he wants.

Mr. Alioto: I take it before the second message came in the Court was asking for the first message. Who has that?

Mr. Neaher: I think this young lady sent it back in.

The Secretary to the Court: I sent it back in to the foreman with the contract.

The Clerk: This is the first note, your Honor. (Handing document to the Court.) [2494]

The Crier: The foreman says he thinks they have what they want in there.

Mr. Alioto: That is the only thing we want to do, your Honor, is to make the request and to request that all messages from the jury be physically attached to the record as a part of the record and marked by the shorthand reporter to identify the messages. Nothing further at this time.

Mr. Holland: No objection to that.

(The messages received from the jury were as follows: First message: "May we see USV

requirement contracts offered to Continental Ore." Second message: "Does control of 95% of the sources of supply by defendants of itself constitute evidence of restraint of trade in violation of the law?")

(At 4:23 p.m. the jury assembled in the courtroom and took their places in the jury box. In the presence of the Court and the counsel for the respective parties the following occurred:)

The Court: Mr. Foreman, you have asked for certain information. The question you asked is this: "Does control of 95% of the sources of supply by the defendants of itself constitute evidence of restraint of trade in violation of the law?" [2495]

Now, the instruction that covers conspiracy and monopolization and attempt to monopolize is as follows. I will read you Instruction No. 22:

"An unlawful conspiracy is an agreement or understanding, express or implied, between two or more persons, to do an illegal act, or to do a legal act in an illegal manner. The essence of the conspiracy is the unlawful agreement or combination. A conspiracy is sometimes defined by the courts as a partnership in an illegal enterprise."

The term "monopolize" as used in Section 2 of the Sherman Act means the joint acquisition or maintenance by ~~the members of the~~ conspiracy formed for that purpose, of the power to control and dominate interstate trade and commerce in a commodity to such an extent that they are able, as a group, to exclude actual or potential competitors

from the field, accompanied with the intention and purpose to exercise such power.

The phrase "attempt to monopolize" means the employment of methods, means and practices which would, if successful, accomplish monopolization, and which, though falling short, nevertheless approach so close as to create a dangerous probability of it, which methods, means and practices are so employed by the members of and pursuant to a combination or conspiracy formed for the purpose of such accomplishment. [2496]

It is in no respect a violation of the law that a number of individuals or corporations, each voting for himself or itself, may own or control a large part, or even all, of a particular commodity, or all the business in a particular commodity.

An essential element of the illegal monopoly or monopolization is the existence of a combination or conspiracy to acquire and maintain the power to exclude competitors to a substantial extent.

In this case the claim is that the defendants entered into an agreement or combination to restrain and monopolize interstate and foreign trade in vanadium products. The burden is on the plaintiffs to establish the existence of such conspiracy during the time plaintiffs were in business. If you find that the plaintiffs have not proved that there was such a conspiracy between the defendants, you should not consider any other issue in the case and you must return a verdict for the defendants.

As the Court has instructed you, there are certain facts which you may take into consideration. That

was one of the reasons why this case was submitted to the jury, and the fact that one of the defendants or two of them own 95% of the sources of supply that would—that is a matter that you can take into consideration, but that within itself is not a conspiracy. It is an indication or evidence that you may take [2497] into consideration in determining whether or not there was a conspiracy. Does that answer your question?

The Foreman: Thank you, your Honor.

The Court: Anything further now that the jury would like to know?

(No juror indicated a desire to make a further statement.)

The Court: You may retire.

(Thereupon at 4:25 p.m. the jury retired from the courtroom to deliberate further upon its verdict.)

(The following proceedings took place immediately after the jury left the courtroom:)

Mr. Alioto: If your Honor please, the plaintiff would respectfully except to the instruction given by the Court to the jury. Of course, we think it plain, particularly from United States against the Aluminum Company of America, 144 fed. 2d, that if 95% is acquired as part of a plan to seek control, that that in itself is a violation of Section 2 of the Sherman Act.

The Court: The case you cited to the Court was the tobacco case in 348 U.S.

Mr. Alioto: Yes, and even under that case.

The Court: This instruction to which you have

excepted was the instruction in that case and it was approved by the Supreme Court. [2498]

Mr. Alioto: Yes, if your Honor please, but now this jury has asked a specific question saying does control of 95% of the raw materials in itself constitute evidence of a violation of the law. I think the jury should be plainly told if 95% was acquired pursuant to a plan to control, that that standing alone is a violation of the anti-trust laws.

The Court: That is exactly what the Court told them.

Mr. Alioto: We do not think so. Furthermore we would respectfully except to the giving of the instruction in isolation from the other instructions, which tended to unduly emphasize this instruction, and we would like the Court to note an exception.

The Court: Exception is allowed. Anything further, gentlemen? We will stand recessed.

(At 4:50 p.m. the jury returned to the courtroom, and in their presence, the presence of the Court and counsel for the respective parties, the following took place:)

The Court: Have you arrived at a verdict?

The Foreman: We have, your Honor.

The Court: Pass it to the Clerk, please.

(A sheet of paper was handed to the Clerk.)

The Court: Read the verdict, Mr. Clerk.

The Clerk: Ladies and gentlemen, listen to your verdict as you have rendered it. Omitting the title of the [2499] case, verdict, "We the jury find in favor of the defendants." Signed "John S. Dodds, Jr., Foreman."

The Court: Is this your verdict, one and all?

The Jury: Yes.

The Court: The Court concurs in your verdict. Is there anything further?

Mr. Alioto: Yes, if your Honor please. We respectfully move that the Court poll the jury as to this verdict.

The Court: All right. Is this your verdict?

(Each of the twelve jurors responded it was his or her verdict.)

The Court: Anything further, gentlemen?

Mr. Archer: Would the Court desire a formal judgment prepared for entry and filing?

Mr. Alioto: I was going to inquire about the same thing, whether the Court was going to enter a judgment on the verdict, on the basis of the minute order, or what it proposed to do. We have a notice of appeal to file, and I was just wondering what the practice of the Court would be.

The Court: I think it would be well for you to file one.

Mr. Archer: I will prepare it and have it for your Honor tomorrow morning.

Mr. Alioto: The judgment then will not be entered [2500] until tomorrow morning, is that correct?

The Court: Very well. The Court desires to express his appreciation of the very careful attention this jury has given to this case. It has been a hard case to try. It is difficult to consider all the facts that have been submitted, and the Court has admired the patience with which you have done your

work. The jury will be excused from further consideration of this case and you can report to the Clerk.

(The jury thereupon retired from the courtroom and the following took place in their absence:)

The Court: I assume, of course, that you will make a motion for a new trial. It isn't necessary.

Mr. Alioto: I am sorry. I didn't hear the Court's remarks. There was a little noise.

The Court: Do you desire to file a motion for a new trial?

Mr. Alioto: We want to look into that problem, if your Honor please. At the time the judgment is entered we would like an opportunity to do that. Realistically I think we have made the points that we desire to make throughout the trial, and we may conclude it would be academic to file a motion. On the other hand, in view of the development of the question as asked by the juror, the last question, about the 95% monopolization and our somewhat strong views that that is specifically covered by the Alcoa case, among others, we may [2501] want to argue that point before your Honor. If in advance we know it is not going to do any good to argue the point, we would not want to inconvenience the Court, frankly, because the Court is here on a visiting basis.

The Court: What I have in mind is, whatever you want to do, anything that it is necessary for the Court to do in this case, I would like to do it by Monday of next week, because my reservations

are for Tuesday morning and I will leave Tuesday morning. Then we might have this agreement, that any orders that are necessary for this Court to make it can make in its home district.

Mr. Archer: That is satisfactory.

Mr. Alioto: We have no objection to that, if your Honor please. Let me ask whether the Court, say, could reserve this Friday for argument. In other words, as I understand it, the Court wants it done before Monday.

The Court: No, Friday is all right. I would prefer Friday.

Mr. Holland: I was hoping to leave tomorrow, Judge. Is there any possibility of that? I have been here a month now.

The Court: This is a pretty good place to stay.

Mr. Archer: I think we ought to convenience the Court, as long as the Court is here: we ought to meet his convenience on that. [2502]

The Court: We may find it necessary to make a return trip here on this case.

Mr. Alioto: I do not think that will be necessary. As far as we are concerned, we are prepared to get whatever motions we want to bring before the Court, we will be prepared to bring them before the Court on Friday. Of course, that would require presumably the defendants to waive the matter of notice.

Mr. Archer: That is satisfactory.

Mr. Alioto: It will require them to waive their having any points and authorities for a new trial

served on them any time before Thursday evening or Friday morning.

Mr. Archer: I think we have covered all the law points in the briefs we have filed.

The Court: I think in the Federal court a motion for a new trial is not absolutely necessary. Of course, in the State courts in our State it is. They appeal from that. But you appeal from the verdict of the jury in this case. If you want to file a motion for a new trial, it might be well as part of your record.

Mr. Alioto: That is all I have in mind, if your Honor please. I want a chance to think about it, particularly in the light of the last instruction given by the Court, which obviously brought about a verdict in a hurry, and we think we would like to bring certain authorities before your Honor on [2503] that. We think the simple answer to that question should have been "Yes," and I would like to present certain authorities to the Court on that point. If, on the other hand, it appears that it is not going to make too much difference with the Court, or if the Court already has an opinion on that, an opinion that is not likely to be changed, I have no desire to inconvenience anybody in staying here. It may be that tomorrow we will decide not to file a motion for a new trial but to file our appeal instead of a motion for a new trial. We will decide that sometime within the next twenty-four hours, if your Honor please, and then take it up with counsel for the defendants so they won't be inconvenienced so far as we are concerned.

Mr. Archer: Anything Mr. Alioto decides to do will be satisfactory with me.

The Court: Whatever you gentlemen agree on. We will recess, then, subject to call. [2504]

[Endorsed]: Filed August 8, 1958.

[Endorsed]: No. 16149. United States Court of Appeals for the Ninth Circuit. Continental Ore Company, a Partnership, and Henry J. Leir, Erna D. Leir, Lina Schloss, as Individuals and as partners under the trade name and style of Continental Ore Company, Appellants, vs. Union Carbide and Carbon Corporation; United States Vanadium Corporation; Electro Metallurgical Company; Electra Metallurgical Sales Corporation; Electro Metallurgical Company of Canada, Limited; Vanadium Corporation of America, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed and docketed: August 21, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16149

CONTINENTAL ORE COMPANY, et al,
Appellants,

vs.

UNION CARBIDE AND CARBON
CORPORATION, et al,
Appellees.

STIPULATION AND ORDER RE EXHIBITS

It is hereby stipulated by and between the parties hereto, by and through their respective attorneys of record, that all exhibits designated by the parties, or any of them, as part of the record on appeal may be considered by this Court in their original form and need not be printed in the record.

Dated: August 26, 1958.

JOSEPH L. ALIOTO,
MAXWELL KEITH,

/s/ By JOSEPH L. ALIOTO,
Attorneys for Appellants.

MORRISON, FOERSTER,
HOLLOWAY, SHUMAN
& CLARK,

/s/ By RICHARD J. ARCHER,
Attorneys for Union Carbide & Carbon and U S.
Vanadium Corporation,

PILLSBURY, MADISON
& SUTRO,

/s/ By JOHN A. SUTRO,
Attorneys for Vanadium Corp. of America.

[Endorsed]: Filed September 2, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

APPELLANTS' STATEMENT OF POINTS ON
APPEAL AND DESIGNATION OF THE
RECORD FOR PRINTING

Pursuant to Rule 17 (6) of the Rules of the above-entitled Court, the following is a concise statement of the points on which appellants intend to rely on their appeal herein:

I. The Court erroneously excluded evidence offered to prove that the appellees violated the Sherman Act.

1. It excluded evidence shortly predating July, 1938 which tended directly and positively to prove the existence of a domestic cartel between the appellees, and the nature and extent of their agreement in violation of the Sherman Act which was in existence during the statutory period of October, 1939 to July, 1948.

2. It excluded evidence that the appellees destroyed and then appropriated appellants' business in the Canadian market.

3. It excluded evidence that agents of the appellee Union Carbide told appellants that they

should not be in the vanadium industry and that appellants should not undertake to do business with the Climax Molybdenum Company, although such matters were expressly set forth in appellants' complaint.

4. It excluded evidence that the appellee Union Carbide's officer secreted documents which the officers believed reflected violations of the Sherman Act.

5. It excluded evidence of conversations with the chief managing agents of Union Carbide in 1939 admitting the appellees' violation of the Sherman Act and setting forth the relationship between the appellees' violations of the Sherman Act in the vanadium industry and their violations of the Sherman Act in low carbon ferrochrome.

6. It excluded evidence disclosing each appellee's cost of doing business and its profits.

7. It excluded evidence of the suppression of patents by appellee Vanadium Corporation of America.

8. It excluded evidence of prior consistent statements of an ex-officer of Union Carbide although his bias and interest were directly attacked by the appellees.

9. It excluded the business records of the appellants and their damage calculations.

10. It excluded the expert opinion of witnesses for appellants on the subject of damages.

II. The Court erred in over-examining appellants' witnesses, commenting on the evidence and

interrupting examination and cross-examination with statements and comments and interrogation which were prejudicial to appellants' case.

III. The Court erred in its instructions to the jury as follows:

1. That it is not a violation of the Sherman Act that one or more firms may own or control all of a particular product or all the business in a particular commodity. (Tr. 2472)

2. That the law recognizes the right of any trader or manufacturer engaged in a private business to refuse to deal. (Tr. 2473-2474)

3. That if any defendant acted on the basis of its own business judgment, no inference of conspiracy can be drawn against that defendant, even though after weighing all of the circumstances the juror's personal opinion might be that the defendant's judgment was incorrect. (Tr. 2474)

4. That the defendants were entitled to a verdict if the jury decided that the evidence of similar business practices did not lead to the conclusion that there was a conspiracy between the defendants. (Tr. 2476-2477)

5. That the plaintiffs had to prove the existence of a public wrong. (Tr. 2477)

6. That the acts of any defendant while acting as agent for the Government of the United States or Canada could not form any proof of conspiracy to monopolize or restrain trade. (Tr. 2479, 2482-2483)

7. That the plaintiffs could not recover damages

if they stopped their business at a time when they could buy vanadium from any supplier. (Tr. 2479)

8. That the plaintiffs had to prove damages based on evidence of actual suppliers, actual sales and net profits. (Tr. 2481)

9. That the instructions of the Court considered as a whole failed to clearly inform the jury that an agreement to acquire control of an industry, together with the acquisition of control, was in itself a violation of the Sherman Act; that individual refusals to deal are neither absolute nor exempt from regulations; that the jury should consider all the evidence in determining all of the issues involved; that the plaintiffs did not have to prove damages with certainty; and that the plaintiffs were not under a burden to return to the industry if they should find that the defendants excluded them and controlled the industry.

IV. The Court erred in refusing the following instructions of appellants:

1. That each individual appellee could be found to have violated the Sherman Act; that Union Carbide could be found to have violated the Sherman Act by the finding of a conspiracy between it and its affiliates (Pltf's Instructions Nos. 5, 8, 9 and 12); and that United States Vanadium Corporation could be, in itself, in violation of the Sherman Act. (Tr. 2232)

2. That the existence of over 90 percent control of an industry by two firms who have conspired together is sufficient of itself to violate the Sherman Act. (Pltf's Instruction No. 7, Tr. 2498-2499.)

3. That if 95 percent of the vanadium industry was acquired by defendants as the result of a plan to monopolize, the defendants violated Section 2 of the Sherman Act. (Tr. 2498)

4. That an agreement to refuse to deal is a per se violation of the antitrust laws. (Pltf's Instruction No. 10.)

5. That the antitrust laws contemplate that the wrongdoer shall bear the risk of uncertainty which his own wrong has created in accordance with the Supreme Court opinion in *Bigelow vs. R.K.O.*, 327 U.S. 359. (Pltf's Instructions Nos. 15, 16.)

6. That the jury could award damages based on the increased costs occasioned by a price-fixing combination. (Pltf's Instruction Nos. 17, 24.)

7. That the jury should consider all the relevant data and estimates of damages offered by expert witnesses in arriving at an award of damages. (Pltf's Instruction No. 19.)

8. That the jury could consider the success of appellant in other lines of businesses in arriving at an award of damages. (Pltf's Instruction No. 21.)

9. That the jury should not consider the wealth of the parties in arriving at their determination. (Pltf's Instruction No. 22.)

10. That the jury should consider whether an appellee used its power as an agent of the United States for the purpose of carrying out or assisting

any combination or conspiracy to restrain trade or monopolize trade in the vanadium industry, and the fact that an appellee might have been an agent of a governmental department does not immunize its conduct from such considerations. (Pltf's Instruction No. 23.)

V. The Court erred in allowing counsel for the Vanadium Corporation of America to inform the jury that the appellees were acquitted by a jury in a prior government criminal action in his opening statement.

In support of the above-mentioned points on appeal, appellant herein designates the following for printing:

1. The Complaint;
2. The Answer of defendant Union Carbide and Carbon Corporation, et al.;
3. The Answer of defendant Vanadium Corporation of America;
4. Plaintiffs' Proposed Instructions to the Jury;
5. Each defendant's Proposed Instructions to the Jury;
6. The verdict for the defendants;
7. The judgment for the defendants;
8. Plaintiffs' Notice of Appeal;
9. This Statement of Points on Appeal and Designation.

10. The following portions of the trial transcript:

* * * * *

Dated: August 29, 1958.

JOSEPH L. ALIOTO,
MAXWELL KEITH,
/s/ By JOSEPH L. ALIOTO,
Attorneys for Appellants,
CADWALADER, WICKERSHAM
& TAFT,
Of Counsel.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 8, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION BY APPELLEES UNION
CARBIDE CORPORATION (SUED HERE-
IN AS UNION CARBIDE AND CARBON
CORPORATION), UNITED STATES VA-
NADIUM CORPORATION, AND VANA-
DIUM CORPORATION OF AMERICA OF
PORTIONS OF RECORD, PROCEED-
INGS, AND EVIDENCE TO BE PRINTED

To the Clerk of the United States Court of Appeals
for the Ninth Circuit:

Appellees Union Carbide Corporation (sued
herein as Union Carbide and Carbon Corporation),
United States Vanadium Corporation and Vana-

dium Corporation of America hereby designate the following additional parts of the record, proceedings, and evidence to be printed:

1. The following portions of the Reporter's Transcript of the trial:

* * * * *

2. The following Plaintiffs' Exhibits: 11, 12, 22, 23, 34, 35 (only the following extracts: page 1, first paragraph, page 3, signatures on page 7), 39, 45, 55, 55-A, 56, 68, 69, 70, 71, 72, 73, 74 (page 1, to and including paragraph 7 on page 5, page 8), 75, 76, 79, 118, 122, 127, 129, 131, 149, 150, 157, 158, 159, 160, 161, 163.

3. The following exhibits introduced by Union Carbide and Carbon Corporation and United States Vanadium Corporation, as indicated by the prefix "U": F, G, H, I, J, L, M, N, O, Q (only the following extracts: pages 1 to 4, being the letter agreement of May 11, 1943; of Contract No. W-7405 eng-78: the cover page; pages 1, 2 and 3; Article IV-J on page 23; that portion of page 27 beginning with the words "In witness whereof * * * " and all of page 28 of contract number W-7405, eng-78), R (only the following extracts: letter dated December 20, 1943, from John W. Hill to Metals Reserve Company and first four pages of report dated November 30, 1943), S, T, 2-B, 2-C, 2-F, 2-G, 2-H, 2-I, 2-N, 2-P, 2-R, 2-S, 2-U, 2-V, 2-W, 2-X, 2-Y, 2-Z, 3-A, 3-B, 3-C, 3-D, 3-E, 3-Q, 3-R, 3-W, 3-X, 3-Y, 3-Z, 4-A, 4-B, 4-R, 4-T, 4-U, 4-V, 5-D, 5-E, 5-F, 5-J, 5-K, 5-M, 5-R, 5-T.

4. The following exhibits introduced by the defendant Vanadium Corporation of America, as indicated by the prefix "V": 1-A, 1-B, 1-D, 1-E, V1-F, V1-G, V1-H, V1-I, 1-J, 1-K, V1-L, V1-M, 1-N, V1-O, 1-P, 1-Q, 1-R, 1-S, 1-T, 1-U, 1-V, 1-W, 1-X, 1-Y, 1-Z, 2-A, 2-B, 2-C, 2-D, 2-E, 2-F, 2-G, 2-H, 2-I, 2-J, 2-K, 2-L, 2-M, 2-N, 2-O, 2-P.

5. This designation.

Dated: San Francisco, October 31, 1958.

/s/ HERBERT W. CLARK,
/s/ RICHARD J. ARCHER,
/s/ GIRVAN PECK,
/s/ HOWARD M. DOWNS,
MORRISON, FOERSTER,
HOLLOWAY, SHUMAN
& CLARK,

Attorneys for Union Carbide Corporation and
United States Vanadium Corporation.

/s/ J. G. HOLLAND,
/s/ EDWARD R. NEAHER,
PILLSBURY, MADISON
& SUTRO,

/s/ JOHN A. SUTRO,
/s/ ALLAN N. LITTMAN,

Attorneys for Vanadium Corpora-
tion of America.

Certificate of Service by Mail Attached.

[Endorsed]: Filed November 1, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

**SUPPLEMENTAL DESIGNATION BY AP-
PELLEES UNION CARBIDE CORPORA-
TION (SUED HEREIN AS UNION CAR-
BIDE AND CARBON CORPORATION),
UNITED STATES VANADIUM CORPO-
RATION, AND VANADIUM CORPORA-
TION OF AMERICA OF PORTIONS OF
RECORD, PROCEEDINGS, AND EVI-
DENCE TO BE PRINTED**

To the Clerk of the United States Court of Appeals
for the Ninth Circuit:

Appellees Union Carbide Corporation (sued herein as Union Carbide and Carbon Corporation), United States Vanadium Corporation and Vanadium Corporation of America hereby designate the following additional parts of the record, proceedings, and evidence to be printed:

1. The following Plaintiffs' Exhibits: 6, 7, 8, 33, 37, 38, 40, 41, 44, 46, 58, 62, 63 (omitting last page, being a memorandum dated 2/14/47), 64, 77, 78, 110, 111, 113, 114, 115, 117, 119, 120, 130, 132, 144, 145, 146, 162, 166; Exhibits 136, 137 and 138 to be reduced in size by photostat.

2. The following exhibits introduced by the defendants Union Carbide and Carbon Corporation and United States Vanadium Corporation, as indicated by the prefix "U": B, C, D, E, K, P, U, Z, 2A, 4C, 4D, 4E, 4H, 4I, 4J, 4K, 4L, 4M, 4N, 4O,

2068 *Continental Ore Company, et al., vs.*

4P, 4Q, 4R, 4S, 4T, 4U, 4V, 4W, 4X, 4Y, 4Z, 5A,
5B, 5H.

3. This designation.

Dated: San Francisco, December 8, 1958.

/s/ HERBERT W. CLARK,
/s/ RICHARD J. ARCHER,
/s/ GIRVAN PECK,
/s/ HOWARD M. DOWNS,
MORRISON, FOERSTER,
HOLLOWAY, SHUMAN
& CLARK,

Attorneys for Union Carbide Corporation and
United States Vanadium Corporation.

/s/ J. G. HOLLAND,
/s/ EDWARD R. NEAHER,
PILLSBURY, MADISON
& SUTRO,
/s/ JOHN A. SUTRO,
/s/ ALLAN N. LITTMAN,
Attorneys for Vanadium Corpora-
tion of America.

Acknowledgment of Service Attached.

[Endorsed]: Filed December 8, 1958. Paul P.
O'Brien, Clerk.